THE MINNESOTA COURT OF APPEALS STANDARDS OF REVIEW

UPDATED AUGUST 2011

INTRODUCTION

When deciding a case, the first task of an appellate court is to identify the applicable standard of review. The standard of review defines the manner in which each issue is reviewed, delineates the boundaries of appellate argument, and often determines the outcome on appeal. Accordingly, the Minnesota Court of Appeals conscientiously identifies and applies a specific standard of review to each issue before the court.

The most persuasive appellate briefs explicitly state the applicable standard of review at the beginning of each issue and then apply it. This outline is intended as a tool for finding and applying various standards of review. Although this manual contains many standards of review, the cases set forth herein are not meant to provide the definitive standard of review for every appeal. Further research may be necessary, depending on the facts and issues on appeal. This manual does not address the scope of review, which concerns the extent to which specific questions or decisions may be raised on appeal.

This outline was originally proposed by Justice Peter Popovich, the first Chief Judge of the Minnesota Court of Appeals and later Chief Justice of the Minnesota Supreme Court. It has been updated periodically, under the supervision of other chief judges and with the efforts of law clerks and staff of the court. I want to thank all of the law clerks and staff attorneys of the Minnesota Court of Appeals who have researched, compiled, and edited this outline. I am confident that their efforts will assist Minnesota attorneys in locating the applicable standard of review and focusing their appellate arguments.

August 2011

Matthew E. Johnson
Chief Judge

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I. CIVIL – GENERAL

A. IN GENERAL

1. Jurisdiction

"Jurisdiction is a question of law that we review de novo." *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 710 (Minn. 2007) (quotation omitted).

"Whether personal jurisdiction exists is a question of law, which an appellate court reviews de novo." *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 533 (Minn. App. 2009).

2. General Standards of Review

a. Questions of Law

"No deference is given to a lower court on questions of law." *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003).

"The application of law to stipulated facts is a question of law, which we . . . review de novo." *In re Estate of Barg*, 752 N.W.2d 52, 63 (Minn. 2008).

"When the material facts are not in dispute, we review the lower court's application of the law de novo." *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007).

b. Mixed Questions of Law and Fact

"In an appeal from a bench trial, we do not reconcile conflicting evidence. We give the district court's factual findings great deference and do not set them aside unless clearly erroneous. However, we are not bound by and need not give deference to the district court's decision on a purely legal issue. When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (alteration in original) (quotations and citations omitted), *review denied* (Minn. June 26, 2002).

c. Questions of Fact

"Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses. The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court." Minn. R. Civ. P. 52.01.

"It is not the province of this court to reconcile conflicting evidence. On appeal, a [district] court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous. . . . If there is reasonable evidence to support the [district] court's findings of fact, a reviewing court should not disturb those findings." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

d. Equitable Determinations

"We have said that we review equitable determinations for an abuse of discretion." *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011) (citing *Lilyerd v. Carlson*, 499 N.W.2d 803, 807, 811 (Minn. 1993) (bench trial) and *Nadeau v. Cnty. of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979) (motion for reinstatement following grant of motion for new trial)).

"[A] district court's conclusion on equitable estoppel after a bench trial is reviewed for an abuse of discretion." *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011).

3. Rules of Construction

a. Statutes

(1) Constitutionality of Statutes

"The constitutionality of a statute is a question of law that we review de novo." *SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007). "Our power to declare a law unconstitutional is to be exercised only when absolutely necessary and then with great caution." *Id.* (quotation omitted). "Accordingly, we will uphold a statute unless the challenging party demonstrates that it is unconstitutional beyond a reasonable doubt." *Id.*

"Minnesota statutes are presumed constitutional and, as we have said in the past, our power to declare a statute unconstitutional must be exercised with extreme caution and only when absolutely necessary." *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720,722 (Minn. 1999).

"The challenger of the constitutional validity of a statute must meet the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." *Assoc. Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000).

(2) Construction and Application of Statutes

"[S]tatutory construction is a question of law, which we review de novo." *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). "The object of all interpretation and construction of laws is to ascertain and effectuate the

intention of the legislature." Minn. Stat. § 645.16 (2010). "We construe statutes to effect their essential purpose but will not disregard a statute's clear language to pursue the spirit of the law." *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 123 (Minn. 2007).

"Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court." *Davies v. W. Publ'g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001) (citing *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998)), *review denied* (Minn. May 29, 2001).

"When the district court grants a summary judgment based on its application of statutory language to the undisputed facts of a case, . . . its conclusion is one of law and our review is de novo." *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998).

"[T]he construction and applicability of a statute of limitation or repose is a question of law subject to de novo review." *State Farm Fire & Cas. v. Aquila Inc.*, 718 N.W.2d 879, 883 (Minn. 2006).

"The application of statutes, administrative regulations, and local ordinances to undisputed facts is a legal conclusion and is reviewed de novo." *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008).

(3) Interpretation of Statutes

"Interpretation of a statute presents a question of law, which we review de novo." *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011).

"Our goal when interpreting statutory provisions is to ascertain and effectuate the intention of the legislature. If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language. If a statute is ambiguous, we apply other cannons of construction to discern the legislature's intent." *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (quotation and citations omitted).

"When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citation omitted).

"A statute should be interpreted, whenever possible, to give effect to all of its provisions; 'no word, phrase, or sentence should be deemed superfluous, void, or insignificant.'" *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quoting *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384

(Minn. 1999)). "We are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations." *Id*.

See also Minn. Stat. §§ 645.01-.51 (2010) (involving interpretation of statutes).

b. Municipal Ordinances

(1) Constitutionality/Reasonableness of an Ordinance

A municipal charter or ordinance is presumed to be constitutional; the burden of proving that it is not is on the party challenging it. *Minn. Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683, 688 (Minn. 2009).

"A municipal ordinance is presumed constitutional; the burden is on the party attacking the ordinance's validity to prove an ordinance is unreasonable or that the requisite public interest is not involved, and consequently that the ordinance does not come within the police power of the city." *N. States Power Co. v. City of Oakdale*, 588 N.W.2d 534, 541 (Minn. App. 1999) (citing *City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955)).

"To prove an ordinance is unreasonable, a complaining party must show that it has no substantial relationship to the public health, safety, morals or general welfare." *N. States Power Co. v. City of Oakdale*, 588 N.W.2d 534, 541 (Minn. App. 1999) (quotation omitted).

"[I]f the 'reasonableness of an ordinance is debatable, courts will not interfere with the legislative discretion.'" *State v. Hyland*, 431 N.W.2d 868, 872 (Minn. App. 1988) (quoting *State v. Modern Box Makers, Inc.*, 217 Minn. 41, 47, 13 N.W.2d 731, 734 (1944)).

(2) Interpretation of Municipal Ordinances

"The interpretation of an ordinance is a question of law for the court, which we review de novo." *Eagle Lake of Becker Cnty. Lake Ass'n v. Becker Cnty. Bd. of Comm'rs*, 738 N.W.2d 788, 792 (Minn. App. 2007) (citing *Billy Graham Evangelistic Ass'n v. City of Minneapolis*, 667 N.W.2d 117, 122 (Minn. 2003)).

"Where . . . the parties agree that there are no material issues of fact, this court first conducts a de novo determination of whether the district court has correctly interpreted the ordinance, giving only slight consideration to the interpretation by the governmental authority." *R.L. Hexum & Assocs., Inc.*

v. Rochester Twp., Bd. of Supervisors, 609 N.W.2d 271, 274 (Minn. App. 2000) (citation omitted).

c. Board of Adjustment Decisions/Municipalities

(1) Standard of Review

"The standard of review remains whether on the evidence before it, the [Board of Adjustment] reached a reasonable decision." *Town of Grant v. Washington Cnty.*, 319 N.W.2d 713, 717 (Minn. 1982). "We are required to make an independent review of the Board's decision." *Id.*

(2) Scope of Review

An appellate court's "authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked." *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982); *see Big Lake Ass'n v. St. Louis Cnty. Planning Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009) ("Our limited and deferential review of a quasi-judicial decision is rooted in separation of powers principles.").

d. Attorney General Opinions

"Opinions of the Attorney General are not binding on the courts . . . ." *Star Tribune Co. v. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004). "When appropriate, opinions of the Attorney General are entitled to careful consideration by appellate courts, particularly where they are of long standing." *Billigmeier v. Cnty. of Hennepin*, 428 N.W.2d 79, 82 (Minn. 1988).

e. Contracts

(1) In General

"[T]he existence and terms of a contract are questions for the fact finder." *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992).

"Absent ambiguity, the interpretation of a contract is a question of law." *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011).

"The plain and ordinary meaning of the contract language controls, unless the language is ambiguous." *Bus. Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009).

(a) Ambiguous Contracts

"Whether a contract is ambiguous is a question of law that we review de novo." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). "The language of a contract is ambiguous if it is susceptible to two or more reasonable interpretations." *Id.*

"[W]here [contract] language is ambiguous, resort may be had to extrinsic evidence, and construction then becomes a question of fact for the jury, unless such evidence is conclusive." *Bari v. Control Data Corp.*, 439 N.W.2d 44, 47 (Minn. App. 1989), *review denied* (Minn. July 12, 1989).

(b) Unambiguous Contracts

"The determination of whether a contract is unambiguous depends on the meaning assigned to the words and phrases in accordance with the apparent purpose of the contract as a whole." *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010).

"When the intent of the parties can be determined from the writing of the contract, the construction of the instrument is a question of law for the court to resolve, and this court need not defer to the district court's findings." *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 671 N.W.2d 213, 221 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Jan. 20, 2004).

(2) Specific Types of Contracts

(a) Employment Contracts

Whether statements made by an employer are definite enough to constitute a unilateral contract is a question of law to be resolved by the court and to be reviewed de novo by the appellate courts. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 740 (Minn. 2000); *see Alexandria Hous. & Redev. Auth. v. Rost*, 756 N.W.2d 896, 904 (Minn. App. 2008). Whether alleged facts "rise to the level of promissory estoppel presents a question of law." *Martens*, 616 N.W.2d at 746.

(b) Insurance Contracts

"The interpretation of an insurance policy is a question of law as applied to the facts presented." *Star Windshield Repair, Inc. v. W. Nat'l Ins. Co.*, 768 N.W.2d 346, 348 (Minn. 2009).

"[T]he interpretation of insurance-policy language based on undisputed underlying facts, as well as statutory construction, are questions of law, which we review de novo." *Mitsch v. Am. Nat'l Prop. & Cas. Co.*, 736 N.W.2d 355, 358 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007).

"The extent of an insurer's liability is determined by the insurance contract with its insured as long as that insurance policy does not omit coverage required by law and does not violate applicable statutes." *Mitsch v. Am. Nat'l Prop. & Cas. Co.*, 736 N.W.2d 355, 358 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007). "This court must construe an insurance policy as a whole and must give unambiguous language its plain and ordinary meaning. But when language in an insurance contract is ambiguous, such that it is reasonably subject to more than one interpretation, we will construe it in favor of the insured." *Id.* (citations omitted).

"Interpretation of insurance policy provisions required by statute involves questions of law, to be reviewed de novo." *Britamco Underwriters, Inc. v. A & A Liquors of St. Cloud*, 649 N.W.2d 867, 871 (Minn. App. 2002) (citing *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 344 (Minn. 2000)).

(c) Settlement Agreements

"A settlement agreement is a contract, and we review the language of the contract to determine the intent of the parties. When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract. But if the language is ambiguous, parol evidence may be considered to determine intent. Whether a contract is ambiguous is a question of law that we review de novo. The language of a contract is ambiguous if it is susceptible to two or more reasonable interpretations." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010) (citations omitted).

B. PRETRIAL MATTERS

1. Service of Process

"Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review de novo." *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008).

2. Amendment of Pleadings

Whether an amended pleading satisfies the requirements of Minn. R. Civ. P. 15.03 to have the amendment relate back is a question of law, subject to de novo review. *Bigay v. Garvey*, 575 N.W.2d 107, 109 (Minn. 1998); *see Metro. Bldg. Cos. v. Ram Bldgs., Inc.*, 783 N.W.2d 204, 211 (Minn. App. 2010), *review denied* (Minn. Aug. 10, 2010).

"Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003).

"Whether the district court has abused its discretion in ruling on a motion to amend may turn on whether it was correct in an underlying legal ruling." *Doe v. F.P.*, 667 N.W.2d 493, 500-01 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003).

3. Discovery Issues

The district court has wide discretion to issue discovery orders and, absent a clear abuse of that discretion, its discovery orders will not be disturbed. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007). "We review a district court's order for an abuse of discretion by determining whether the district court made findings unsupported by the evidence or by improperly applying the law." *Id.*

"A referee has broad discretion to issue discovery orders and will be reversed on appeal only upon an abuse of such discretion." *In re Overboe*, 745 N.W.2d 852, 861 (Minn. 2008) (quotation omitted).

4. Intervention of Parties/Interpleader

For cases concerning permissive intervention under Minn. R. Civ. P. 24.02, a "decision concerning intervention is left to the discretion of the [district] court and will be reversed only when there has been a clear abuse of its discretion." *Norman v. Refsland*, 383 N.W.2d 673, 676 (Minn. 1986). "Orders concerning intervention as a matter of right, pursuant to Minn. R. Civ. P. 24.01, are subject to de novo review and are independently assessed on appeal." *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. App. 2005).

"Because interpleader actions are equitable in nature, the standard of review is abuse of discretion." *Faegre & Benson, LLP v. R & R Investors*, 772 N.W.2d 846, 852 (Minn. App. 2009), *review denied* (Minn. Dec. 23, 2009).

5. Recusal and Removal of Judges

Denial of a recusal motion is within the district court's discretion and should not be reversed absent a clear abuse of discretion. *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

"Whether to honor a request for removal based on allegations of actual prejudice is a matter for the [district] court's discretion." *Durell v. Mayo Found.*, 429 N.W.2d 704, 705 (Minn. App. 1988) (emphasis omitted), *review denied* (Minn. Nov. 16, 1988).

6. Claim Preclusion and Issue Preclusion

"Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that we review de novo." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004).

"Once the reviewing court determines that collateral estoppel is available, the decision to apply collateral estoppel is left to the district court's discretion." *In re Estate of Perrin*, 796 N.W.2d 175, 179 (Minn. App. 2011) (quotation omitted).

"We review the application of res judicata de novo." *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011).

"The determination of whether collateral estoppel is available presents a mixed question of law and fact also subject to de novo review." *Care Inst., Inc.-Roseville v. Cnty. of Ramsey*, 612 N.W.2d 443, 446 (Minn. 2000).

7. Motion for Continuance

"The granting of a continuance is a matter within the discretion of the [district] court and its ruling will not be reversed absent a showing of clear abuse of discretion." *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). "We review district court rulings on continuance and new trial motions for abuse of discretion." *Torchwood Props, LLC v. McKinnon*, 784 N.W.2d 416, 418 (Minn. App. 2010).

8. Temporary Injunctions and Restraining Orders

"The district court has broad discretion to grant or deny a temporary injunction, and we will reverse only for abuse of that discretion." *U.S. Bank Nat'l Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000).

"A decision on whether to grant a temporary injunction is left to the discretion of the [district] court and will not be overturned on review absent a clear abuse of that discretion." *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993).

"A district court's findings regarding entitlement to injunctive relief will not be set aside unless clearly erroneous." *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003).

"In deciding whether the [temporary injunction] determination made by the district court should be sustained on appeal, we consider the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief. We also evaluate the relationship between the parties preexisting the dispute and the relative hardships that would result if the temporary restraint were denied or issued." *Berggren v. Town of Duluth*, 304 N.W.2d 24, 26 (Minn. 1981) (citing *Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321 (1965)) (other citations omitted); *see also Haley v. Forcelle*, 669 N.W.2d 48, 55-56 (Minn. App. 2003) (listing the five *Dahlberg* factors to be considered on review), *review denied* (Minn. Nov. 25, 2003).

9. Class Certification

This court reviews a district court's decision granting or denying class certification for abuse of discretion. *Whitaker v. 3M Co.*, 764 N.W.2d 631, 635 (Minn. App. 2009), *review denied* (Minn. July 22, 2009). An erroneous application of Minn. R. Civ. P. 23 constitutes an abuse of discretion by the district court. *Id.* at 636.

C. PRETRIAL JUDGMENTS

1. Default Judgment

"This court will not overturn a ruling on a motion to vacate a default judgment unless the district court abused its discretion." *Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004).

"The discretion of the district court in opening a default judgment is particularly broad when the court's decision is based upon an evaluation of conflicting affidavits." *Roehrdanz v. Brill*, 682 N.W.2d 626, 631-32 (Minn. 2004).

"The district court has broad discretion in deciding whether to grant or deny a rule 60.02 motion." *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008) (citing *Kosloski v. Jones*, 295 Minn. 177, 180, 203 N.W.2d 401, 403 (1973)), *review denied* (Minn. April 29, 2008). "But broad discretion does not mean that the discretion is unlimited." *Id.* (citing *Spicer v. Carefree Vacations, Inc.*, 370 N.W.2d 424, 426 (Minn. 1985)). "[T]he supreme court has held that, 'if the [district] court has acted under a misapprehension of the law,' the decision will be reversed on appeal even though the opening of a default judgment 'lies almost wholly within the sound discretion of the [district] court.'" *Id.* (quoting *Sommers v. Thomas*, 251 Minn. 461, 469, 88 N.W.2d 191, 196-97 (1958)). "Similarly, when the district court's reasons are based on facts not supported by the record, the determination will not be sustained." *Id.* at 402-03 (citing *Roehrdanz v. Brill*, 682 N.W.2d 626, 631-32 (Minn.

2004); *Duenow v. Lindeman*, 223 Minn. 505, 518, 27 N.W.2d 421, 429 (1947) (reversing order denying motion to vacate because "plain and decisive facts were entirely overlooked by the trial judge")).

2. Judgment on the Pleadings and Dismissal of Actions

"When reviewing a case dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before this court is whether the complaint sets forth a legally sufficient claim for relief." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008) (citing *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997)).

When reviewing a dismissal under Minn. R. Civ. P. 12.02(e), "[t]he reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003) (citing *Marquette Nat'l Bank v. Norris*, 270 N.W.2d 290, 292 (Minn. 1978)). "The standard of review is therefore de novo." *Id.*

A district court's "dismissal of an action for procedural irregularities will be reversed on appeal only if it is shown that the [district] court abused its discretion." *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990) (reviewing dismissal for failure to comply with statutory requirements); *Juetten v. LCA-Vision, Inc.*, 777 N.W.2d 772, 775 (Minn. App. 2010), *review denied* (Minn. Apr. 28, 2010).

An appellate court "evaluate[s] the district court's" dismissal under Minn. R. Civ. P. 41.02 "under an abuse of discretion standard." *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 395 (Minn. 2003).

"A reviewing court will not reverse a district court's decision on a [Minn. R. Civ. P. 41.01(b)] motion unless the district court abuses its discretion." *Altimus v. Hyundai Motor Co.*, 578 N.W.2d 409, 411 (Minn. App. 1998).

A district court has "a wide discretion in determining whether dismissals shall be with or without prejudice." *Falkenstein v. Braufman*, 251 Minn. 444, 452, 88 N.W.2d 884, 889 (1958).

3. Summary Judgment

"On appeal from summary judgment, we must review the record to determine whether there is any genuine issue of material fact and whether the district court erred in its application of the law." *Dahlin v. Kroening*, 796 N.W.2d 503, 504-05 (Minn. 2011).

"We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are

genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted).

"On appeal, we review a grant of summary judgment 'to determine (1) if there are genuine issues of material fact and (2) if the district court erred in its application of the law.'" *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quoting *K.R. v. Sanford*, 605 N.W.2d 387, 389 (Minn. 2000)).

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted); *see* Minn. R. Civ. P. 56.03.

"[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). "[T]he party resisting summary judgment must do more than rest on mere averments." *Id.*

No genuine issue for trial exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (alteration in original) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)). "[W]hen the nonmoving party bears the burden of proof on an element essential to the nonmoving party's case, the nonmoving party must make a showing sufficient to establish that essential element." *Id.* at 71; *see also Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 507 (Minn. 2006) (describing *substantial evidence* as "incorrect legal standard" and clarifying that "summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions").

"The district court's denial of a motion for summary judgment is not within the scope of review on appeal from a judgment entered after a jury verdict." *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 912 (Minn. 2009). But the supreme court has recognized that an exception to this rule may exist if the denial of summary judgment is "based on a legal conclusion on an issue that is not presented to the jury for determination." *Id.* at 918 n.9.

"Whether an order can properly be certified under Minn. R. Civ. P. 54.02 raises a legal question that requires construction and application of a procedural rule, which we review de novo. If an order can properly be certified, we review the district

court's decision whether or not to do so for an abuse of discretion." *T.A. Schifsky & Sons, Inc. v. Bahr Constr. LLC*, 773 N.W.2d 783, 786-87 (Minn. 2009) (citation omitted).

D. TRIAL MATTERS

1. Evidentiary Issues

a. Admission and Exclusion of Evidence

"The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted).

"In the absence of some indication that the [district] court exercised its discretion arbitrarily, capriciously, or contrary to legal usage, the appellate court is bound by the result." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997).

"Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (quotation omitted).

"[T]he [district] court has the discretion to refuse to receive inadmissible evidence offered without objection." *St. Croix Eng'g Corp. v. McLay*, 304 N.W.2d 912, 914 (Minn. 1981).

"Evidentiary rulings concerning materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence are within the [district] court's sound discretion and will only be reversed when that discretion has been clearly abused." *Johnson v. Wash. Cnty.*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted).

"The application of the parol evidence rule is a question of law subject to de novo review." *Mollico v. Mollico*, 628 N.W.2d 637, 640 (Minn. App. 2001); *see Borgersen v. Cardiovascular Sys., Inc.*, 729 N.W.2d 619, 625 (Minn. App. 2007) ("Whether an agreement is completely integrated and therefore not subject to variance by parol evidence is an issue of law.").

b. Foundation for Evidence

"[A] decision on sufficiency of foundation is within the discretion of the [district] court." *McKay's Family Dodge v. Hardrives, Inc.*, 480 N.W.2d 141, 147 (Minn. App. 1992) (quotation omitted), *review denied* (Minn. Mar. 26, 1992).

c. Novel Scientific Evidence

"The standard of review of admissibility determinations under *Frye-Mack* is two-pronged. Whether a particular principle or technique satisfies the first prong, general acceptance in the relevant scientific field, is a question of law that [appellate courts] review de novo. District court determinations under the second prong, foundational reliability, are reviewed under an abuse of discretion standard, as are determinations of expert witness qualifications and helpfulness." *Goeb v. Tharaldson*, 615 N.W.2d 800, 815 (Minn. 2000) (citation omitted).

Note: Minnesota has not adopted the *Daubert* standard, which our supreme court has characterized as "less rigorous." *State v. Traylor*, 656 N.W.2d 885, 893 (Minn. 2003).

2. Witnesses

a. Examination of Witnesses

"The [district] court's decisions with respect to when leading questions will be permitted will not be reversed in the absence of a clear abuse of discretion." *Ossenfort v. Associated Milk Producers, Inc.*, 254 N.W.2d 672, 679 n.7 (Minn. 1977).

"[W]hat is proper rebuttal evidence rests almost wholly in the discretion of the [district] court." *Riley Bros. Constr., Inc. v. Shuck*, 704 N.W.2d 197, 205 (Minn. App. 2005) (quotation omitted).

b. Lay Witnesses

The competence of a lay witness to give opinion evidence "is peculiarly within the province of the [district court], whose ruling will not be reversed unless it is based on an erroneous view of the law or clearly not justified by the evidence." *Muehlhauser v. Erickson*, 621 N.W.2d 24, 29 (Minn. App. 2000) (quotation omitted).

c. Expert Witness Testimony

Whether expert testimony is required to establish a prima facie case is a question of law. *Tousignant v. St. Louis Cnty.*, 615 N.W.2d 53, 58 (Minn. 2000).

"A district court's evidentiary ruling on the admissibility of an expert opinion rests within the sound discretion of the [district] court and will not be reversed unless it is based on an erroneous view of the law or it is an abuse of discretion. The district court has considerable discretion in determining the sufficiency of foundation laid for expert opinion. Even if evidence has probative value, it is still within the district court's discretion to exclude the testimony. This is a very

deferential standard. In fact, we have stated that even if this court would have reached a different conclusion as to the sufficiency of the foundation, the decision of the district court judge will not be reversed absent clear abuse of discretion." *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760-61 (Minn. 1998) (quotations and citation omitted).

3. Presenting Questions to the Jury

a. Framing Special-Verdict Questions

The district court "has broad discretion regarding the form and substance of special verdict questions." *SCSC Corp. v. Allied Mut. Ins. Co.*, 536 N.W.2d 305, 313 (Minn. 1995).

b. Submission of Equitable Claims

"Whether an action is of an equitable nature so as to require determination by a court without a jury rests largely in the sound discretion of the [district] court." *Johnson v. Johnson*, 272 Minn. 284, 298, 137 N.W.2d 840, 850 (1965).

When reviewing an equitable remedy, "we have not interfered unless the [district] court clearly abuses its discretion." *Lilyerd v. Carlson*, 499 N.W.2d 803, 811 (Minn. 1993).

4. Directed Verdict, now known as Motion for Judgment as a Matter of Law (JMOL). See Section F.2, at page 22.

5. Jury Instructions

"The district court has broad discretion in determining jury instructions and we will not reverse in the absence of abuse of discretion." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002).

"District courts are allowed considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction." *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002); *RAM Mut. Ins. Co. v. Meyer*, 768 N.W.2d 399, 406 (Minn. App. 2009) ("District courts are allowed considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction"), *review denied* (Minn. Oct. 20, 2009).

"An instruction that is so misleading that it renders incorrect the instruction as a whole will be reversible error, but a jury instruction may not be attacked successfully by lifting a single sentence or word from its context. Where instructions overall fairly and correctly state the applicable law, appellant is not entitled to a new trial." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002) (citation and quotations omitted).

"Errors [in a jury instruction] are likely to be considered fundamental or controlling if they destroy the substantial correctness of the charge as a whole, cause miscarriage of justice, or result in substantial prejudice." *Lindstrom v. Yellow Taxi Co. of Minneapolis*, 298 Minn. 224, 229, 214 N.W.2d 672, 676 (1974) (quotation and citations omitted).

6. Findings of Fact

a. Jury Findings

(1) General Verdicts

"First, the evidence must be reviewed in the light most favorable to the verdict. Second, an appellate court will overturn a jury verdict only if no reasonable mind could find as the jury did." *Reedon of Faribault, Inc. v. Fid. & Guar. Ins. Underwriters, Inc.*, 418 N.W.2d 488, 491 (Minn. 1988) (citations omitted).

"[J]ury verdicts are to be set aside only if manifestly contrary to the evidence viewed in a light most favorable to the verdict. A verdict will not be set aside unless the evidence against it is practically conclusive." *Ouellette by Ouellette v. Subak*, 391 N.W.2d 810, 817 (Minn. 1986) (citations omitted).

(2) Special Verdicts

"[A] special verdict form is to be liberally construed to give effect to the intention of the jury and on appellate review it is the court's responsibility to harmonize all findings if at all possible." *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 618 (Minn. 2008) (alteration in original) (quotation omitted).

"An answer to a special verdict question should be set aside only if it is perverse and palpably contrary to the evidence, or where the evidence is so clear as to leave no room for differences among reasonable persons." *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 888 (Minn. 2010) (quotation omitted).

"Review [of a special verdict] is particularly limited when the jury finding turns largely upon an assessment of the relative credibility of witnesses whose testimonial demeanor was observed only by the jury and the [district] court and the latter has approved the findings made." *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 662-63 (Minn. 1999).

"The test is whether the special verdict answers can be reconciled in any reasonable manner consistent with the evidence and its fair inferences. If the answers to special verdict questions can be reconciled on *any* theory, the

verdict will not be disturbed." *Dunn v. Nat'l Beverage Corp.*, 745 N.W.2d 549, 555 (Minn. 2008) (quotations and citation omitted).

"[A] jury's answer to a special verdict form can be set aside only if no reasonable mind could find as did the jury." *Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724, 734 (Minn. 1997).

b. District Court Findings

"Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses. The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court." Minn. R. Civ. P. 52.01.

In applying Minn. R. Civ. P. 52.01, "we view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). "The decision of a district court should not be reversed merely because the appellate court views the evidence differently." *Id.* "Rather, the findings must be manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). And "[i]f there is reasonable evidence to support the district court's findings, we will not disturb them." *Rogers*, 603 N.W.2d at 656.

Note: Be careful not to cite pre-1985 cases regarding rule 52.01. The 1985 amendment to rule 52.01 requires findings of fact "whether based on oral or documentary evidence" to be reviewed for clear error. *See First Trust Co. v. Union Depot Place Ltd. P'ship*, 476 N.W.2d 178, 181-82 (Minn. App. 1991) (addressing 1985 amendment), *review denied* (Minn. Dec. 13, 1991).

E. REMEDIES

1. Monetary Remedies

a. Amount of Award in General

"Generally, we will not disturb a damage award unless the 'failure to do so would be shocking or would result in plain injustice.'" *Dunn v. Nat'l Beverage Corp.*, 745 N.W.2d 549, 555 (Minn. 2008) (citing *Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 199 (Minn. 1986)).

The district court's determination on whether an award of damages is excessive "will only be disturbed for a clear abuse of discretion." *Dallum v. Farmers Union*

Cent. Exch., Inc., 462 N.W.2d 608, 614 (Minn. App. 1990) (quoting *Nelson v. Nelson*, 283 N.W.2d 375, 379 (Minn. 1979)), *review denied* (Minn. Jan. 14, 1991); *see Myers v. Hearth Techs., Inc.*, 621 N.W.2d 787, 792 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001).

A reviewing court should not set aside a jury verdict on damages "unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (internal quotation omitted).

b. Additur and Remittitur

The district court exercises discretion in granting or denying remittitur, and appellate courts will not reverse unless there was a clear abuse of discretion. *Myers v. Hearth Techs., Inc.*, 621 N.W.2d 787, 792 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001).

When a district court has examined the jury's verdict and outlined the reasons for its decision on a motion for remittitur, an appellate court is unlikely to tamper with that decision absent an abuse of discretion. *Sorenson v. Kruse*, 293 N.W.2d 56, 63 (Minn. 1980).

It is within the district court's discretion to determine whether damages are excessive and whether the cure therefor is remittitur or a new trial. *Ray v. Miller Meester Adver., Inc.*, 664 N.W.2d 355, 368 (Minn. App. 2003), *aff'd* 684 N.W.2d 404 (Minn. 2004).

The decision of whether to grant additur rests within the district court's discretion. *Rush v. Jostock*, 710 N.W.2d 570, 577 (Minn. App. 2006), *review denied* (Minn. May 24, 2006).

c. Special and Punitive Damages

Whether a particular type of claimed damage may be recovered as "special damages" is a question of law reviewed de novo. *Paidar v. Hughes*, 615 N.W.2d 276, 279 (Minn. 2000).

We review an order denying a motion to amend a complaint to add punitive damages for abuse of discretion. *Bjerke v. Johnson*, 727 N.W.2d 183, 196 (Minn. App. 2007), *aff'd* 742 N.W.2d 660 (Minn. 2007).

"[T]he amount of punitive damages to award is a decision that is almost exclusively within the province of the jury[;] we will not disturb the award on appeal unless it is so excessive as to be unreasonable." *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 259 (Minn. 1980); *see Ray v. Miller Meester*

Adver., Inc., 664 N.W.2d 355, 371 (Minn. App. 2003), *aff'd* 684 N.W.2d 404 (Minn. 2004).

2. Equitable Remedies

a. In General

"Granting equitable relief is within the sound discretion of the [district] court. Only a clear abuse of that discretion will result in reversal." *Nadeau v. Cnty. of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979); *see Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 277 (Minn. 2010).

b. Specific Performance

"We review a district court's decision to award equitable relief, including specific performance, for abuse of discretion." *Dakota Cnty. HRA v. Blackwell*, 602 N.W.2d 243, 244 (Minn. 1999).

c. Injunctions

"A decision on whether to grant a temporary injunction is left to the discretion of the [district] court and will not be overturned on review absent a clear abuse of that discretion." *Softchoice, Inc. v. Schmidt*, 763 N.W.2d 660, 665-66 (Minn. App. 2009) (quoting *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993)).

d. Interpleader

"Because interpleader actions are equitable in nature, the standard of review is abuse of discretion." *Faegre & Benson, LLP v. R & R Investors*, 772 N.W.2d 846, 852 (Minn. App. 2009).

e. Appointment of a Receiver

The appointment of a receiver pendente lite is an equitable remedy, and the decision to grant or deny this remedy falls within a district court's discretion. *Mut. Benefit Life Ins. Co. v. Frantz Klodt & Son, Inc.*, 306 Minn. 244, 246, 237 N.W.2d 350, 352 (1975). "Appointment of a receiver is within the discretion of the [district] court." *Minn. Hotel Co. v. ROSA Dev. Co.*, 495 N.W.2d 888, 891 (Minn. App. 1993).

f. Mandamus Relief

On appeal, we will reverse a district court's order on an application for mandamus relief "only when there is no evidence reasonably tending to sustain the [district] court's findings." *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995).

"When a decision on a writ of mandamus is based solely on a legal determination, we review that decision de novo." *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

3. Other Remedies

a. Contempt of Court

On appeal, we reverse the factual findings of a contempt order only if they are clearly erroneous. *In re Welfare of Children of J.B.*, 782 N.W.2d 535, 538 (Minn. 2010). We reverse a district court's decision to invoke its contempt powers only if we find an abuse of discretion. *Id*.

b. Sanctions

We review the district court's order for a rule 11 sanction for an abuse of discretion. *In re Claims for No-Fault Benefits Against Progressive Ins. Co.*, 720 N.W.2d 865, 874 (Minn. App. 2006), *review denied* (Minn. Nov. 22, 2006).

Levying of civil penalties is within the district court's discretion. *See State by Humphrey v. Alpine Air Prods., Inc.*, 490 N.W.2d 888, 897 (Minn. App. 1992), *aff'd*, 500 N.W.2d 788 (Minn. 1993).

"The district court's discovery-related orders will not be disturbed absent an abuse of discretion." *Frontier Ins. Co. v. Frontline Processing Corp.*, 788 N.W.2d 917, 922 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010).

The party challenging the district court's choice of sanctions for spoliation of evidence "has the difficult burden of convincing an appellate court that the [district] court abused its discretion—a burden which is met only when it is clear that no reasonable person would agree with the [district] court's assessment of what sanctions are appropriate." *Patton v. Newmar Corp*., 538 N.W.2d 116, 119 (Minn. 1995) (quotation omitted).

"An appellate court applies an abuse-of-discretion standard when reviewing a district court's decision to impose sanctions under Minn. R. Civ. P. 11." *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 150 (Minn. App. 1999), *review denied* (Minn. Mar. 14, 2000).

c. Attorney Fees and Costs

"We will not reverse the district court's decision on attorney fees absent an abuse of discretion." *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007).

The district court shall allow reasonable costs to a prevailing party in a district court action. *Benigni v. Cnty. of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998). The district court retains discretion to determine which party, if any, qualifies as a prevailing party when considering a request for costs incurred. *Id.* at 54-55 (citing *In re Will of Gershcow*, 261 N.W.2d 335, 340 (Minn. 1977)).

"We review the district court's award of attorney fees or costs for abuse of discretion." *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008).

Generally, an award of costs and disbursements is a matter within the district court's sound discretion and will not be disturbed absent an abuse of that discretion. *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 482 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006).

The reasonable value of counsel's work is a question of fact and we must uphold the district court's findings on that issue unless they are clearly erroneous. *Amerman v. Lakeland Dev. Corp.*, 295 Minn. 536, 537, 203 N.W.2d 400, 400-01 (1973).

"Although the reasonable value of attorney fees is a question of fact, when considering whether the district court employed the proper method to calculate the amount of an attorney lien, we undertake a de novo review." *Thomas A. Foster & Assocs. v. Paulson*, 699 N.W.2d 1, 4 (Minn. App. 2005) (citations omitted).

F. POSTTRIAL MATTERS

1. Motion for New Trial

"We review a district court's new trial decision under an abuse of discretion standard." *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010).

Because the district court has the discretion to grant a new trial, we will not disturb the decision absent a clear abuse of that discretion. Where the district court exercised no discretion and ordered a new trial because of an error of law, a de novo standard of review applies. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

An appellate court "will not set aside a jury verdict on an appeal from a district court's denial of a motion for a new trial unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Navarre v. S. Wash. Cnty. Sch.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotations omitted).

"The discretion to grant a new trial on the ground of excessive damages rests with the [district] court, whose determination will only be overturned for abuse of that

discretion." *Advanced Training Sys., Inc. v. Caswell Equip. Co.*, 352 N.W.2d 1, 11 (Minn. 1984).

2. Motion for Judgment as a Matter of Law (JMOL), formerly known as Motion for Judgment Notwithstanding the Verdict (JNOV)

Note: In 2006, the Minnesota Rules of Civil Procedure Advisory Committee eliminated the nominal distinction between motions for directed verdict and motions for judgment notwithstanding the verdict (JNOV), which have historically been decided under the same standard. Both are now characterized by the rule as motions for judgment as a matter of law. *See* Minn. R. Civ. P. 50.04 2006 advisory comm. cmt. Caselaw from this court acknowledges that "JMOL" should now be used instead of "JNOV." *See, e.g., Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 n.1 (Minn. App. 2007).

"[JMOL] should be granted: 'only in those unequivocal cases where (1) in the light of the evidence as a whole, it would clearly be the duty of the [district] court to set aside a contrary verdict as being manifestly against the entire evidence, or where (2) it would be contrary to the law applicable to the case.'" *Jerry's Enters., Inc., v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006) (quoting *J.N. Sullivan & Assocs., Inc. v. F.D. Chapman Constr. Co.*, 304 Minn. 334, 336, 231 N.W.2d 87, 89 (1975)); *see also Glorvigen v. Cirrus Design Corp.*, 796 N.W.2d 541, 549 (Minn. App. 2011).

"Viewing the evidence in a light most favorable to the nonmoving party, this court makes an independent determination of whether there is sufficient evidence to present an issue of fact for the jury." *Jerry's Enters., Inc., v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006).

"We apply de novo review to the district court's denial of a Rule 50 motion." *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009); *Glorvigen v. Cirrus Design Corp.*, 796 N.W.2d 541, 549 (Minn. App. 2011). "[W]e view the evidence in the light most favorable to the prevailing party." *Bahr*, 766 N.W.2d at 919.

G. PARTICULAR TYPES OF ACTIONS

1. Declaratory-Judgment Actions

"When reviewing a declaratory judgment action, we apply the clearly erroneous standard to factual findings, and review the district court's determinations of law de novo . . . ." *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007) (citations omitted); *see also Skyline Village Park Ass'n v. Skyline Village L.P.*, 786 N.W.2d 304, 306 (Minn. App. 2010).

"In a declaratory judgment action tried without a jury, the court as the trier of facts must be sustained in its findings unless they are palpably and manifestly contrary to

the evidence." *Samuelson v. Farm Bureau Mut. Ins. Co.*, 446 N.W.2d 428, 430 (Minn. App. 1989), *review denied* (Minn. Nov. 22, 1989).

2. Actions against a Governmental Body

a. Actions against a Municipality

Although rebuttable, there is a strong presumption favoring action taken by a city. *Arcadia Dev. Corp. v. City of Bloomington*, 267 Minn. 221, 226, 125 N.W.2d 846, 850 (1964). If the reasonableness of the city's action is "doubtful[ ] or fairly debatable, a court will not interject its own conclusions as to more preferable actions." *Id*.

"Interpretations of state statutes and existing local zoning ordinances are questions of law that this court reviews de novo. Zoning decisions of a municipal body that require judgment and discretion are reviewed to determine whether the municipal body acted arbitrarily, capriciously, or unreasonably, and whether the evidence reasonably supports the decision made." *Clear Channel Outdoor Adver., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004) (quotation and citation omitted), *review denied* (Minn. May 18, 2004).

"The interpretation of statutes and municipal resolutions involves questions of law we review de novo." *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 529 (Minn. 2010).

An appellate court reviews a municipal variance decision "to determine whether the municipality was [] within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively, or unreasonably, and to determine whether the evidence could reasonably support or justify the determination." *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 727 (Minn. 2010) (quoting *In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008) (internal quotation omitted)).

b. Governmental Immunity

"The application of immunity is a question of law that we review de novo." *J.E.B. v. Danks*, 785 N.W.2d 741, 746 (Minn. 2010).

"Whether government entities and public officials are protected by statutory immunity and official immunity is a legal question which this court reviews de novo." *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996).

II. CIVIL – FAMILY

A. IN GENERAL

1. Jurisdiction and Venue

a. Jurisdiction

Questions of subject-matter jurisdiction are reviewed de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002); *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001); *see In re Welfare of Children of D.M.T.-R*, ___ N.W.2d ___, ___, 2011 WL 2519221, at *3 (Minn. App. June 27, 2011) (stating "[w]hether subject-matter jurisdiction exists presents a question of law, which we review de novo"); *Wareham v. Wareham*, 791 N.W.2d 562, 564 (Minn. App. 2010) (stating that "the existence of subject-matter jurisdiction and a determination of the meaning of statutes addressing subject-matter jurisdiction present legal questions, which this court reviews de novo"); *In re Welfare of Children of A.I. (Deceased)*, 779 N.W.2d 886, 894 (Minn. App. 2010) (stating that "[j]urisdiction in juvenile court matters is a question of law, reviewed de novo"), *pet. for review dismissed* (Minn. Apr. 20, 2010); *In re Welfare of S.R.S.*, 756 N.W.2d 123, 126 (Minn. App. 2008) (stating that "[t]his court reviews questions of jurisdiction and interpretation of statutes de novo"), *review denied* (Minn. Dec. 16, 2008).

"Whether personal jurisdiction exists is a question of law, which we review de novo." *Wick v. Wick*, 670 N.W.2d 599, 603 (Minn. App. 2003).

"Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review de novo. But in conducting this review, we must apply the facts as found by the district court unless those factual findings are clearly erroneous." *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008); *see Rodewald v. Taylor*, 797 N.W.2d 729, 731 (Minn. App. 2011) (applying *Shamrock* in a family-law case) (citations omitted).

"The parties cannot by their actions or agreement confer jurisdiction on the court, and an appellate court will determine the jurisdictional facts on its own motion even if neither party has raised the issue." *Davidner v. Davidner*, 304 Minn. 491, 493, 232 N.W.2d 5, 7 (1975); *see Ferraro v. Ferraro*, 364 N.W.2d 821, 822 (Minn. App. 1985) (applying *Davidner*).

This court reviews legal issues concerning jurisdiction de novo. *McLain v. McLain*, 569 N.W.2d 219, 222 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997).

In the context of the Uniform Interstate Family Support Act, "we review de novo whether the Minnesota tribunal retains continuing, exclusive jurisdiction to

modify its prior child-support order." *Wareham v. Wareham*, 791 N.W.2d 562, 564 (Minn. App. 2010).

"Application of the Uniform Child Custody Jurisdiction Act (UCCJEA) involves questions of subject matter jurisdiction." *Schroeder v. Schroeder*, 658 N.W.2d 909, 911 (Minn. App. 2003).

"[A] finding of proper domicile to confer jurisdiction for commencement of a divorce action will not be reversed unless it is palpably contrary to the evidence." *Davidner v. Davidner*, 304 Minn. 491, 493, 232 N.W.2d 5, 7 (1975).

b. Venue

"We review a district court's denial of a motion for a change of venue in a family law case under an abuse-of-discretion standard." *Toughill v. Toughill*, 609 N.W.2d 634, 642 (Minn. App. 2000); *see Buckheim v. Buckheim*, 231 Minn. 333, 338, 43 N.W.2d 113, 116 (1950) (holding that although moving party's affidavits were sufficient to allow change of venue, district court did not abuse its discretion in denying motion when the counter affidavits supported district court's decision to deny motion).

c. Standing

The existence of standing is reviewed de novo. *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011); *In re Best Interest of M.R.P.-C.*, 794 N.W.2d 373, 376 (Minn. App. 2011).

"Minnesota case law also requires that a party have standing before a court can court exercise jurisdiction." *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011).

2. Interpretation of Judgments

If a judgment is ambiguous, a district court may construe or clarify it. *Stieler v. Stieler*, 244 Minn. 312, 319, 70 N.W.2d 127, 131 (1955). Absent ambiguity, however, it is not proper for a district court to interpret a stipulated judgment. *See Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977).

"[I]f language is reasonably subject to more than one interpretation, there is ambiguity." *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986).

Stipulated dissolution judgments are treated as binding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997); *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). "The general rule for the construction of contracts . . . is that where the language employed by the parties is

plain and unambiguous there is no room for construction." *Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977).

"Whether a dissolution judgment is ambiguous is a legal question. If a judgment is ambiguous, a district court may construe or clarify it. The meaning of an ambiguous judgment provision is a fact question, which we review for clear error. Notably, a district court's construction of its own ruling is given great weight on appeal." *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005) (citations omitted).

3. Findings of Fact

a. Generally

"Appellate [courts] set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility. Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotations and citations omitted).

"When determining whether findings are clearly erroneous, the appellate court views the record in the light most favorable to the [district] court's findings." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

"That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). In order to successfully challenge a district court's findings of fact, "the party challenging the findings must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . , the record still requires the definite and firm conviction that a mistake was made." *Id.*

Appellate courts defer to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that, on appeal, appellate courts "neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder").

"When evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal." *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

A district court's recitation of the parties' assertions "is not making true findings" because findings "must be affirmatively stated as findings of the [district] court." *Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989).

"'[A] fact found by the court, although expressed as a conclusion of law, will be treated upon appeal as a finding of fact.'" *Bissell v. Bissell*, 291 Minn. 348, 351 n.1, 191 N.W.2d 425, 427 n.1 (1971) (quoting *Graphic Arts Educ. Found., Inc. v. State*, 240 Minn. 143, 145-46, 59 N.W.2d 841, 844 (1953)); *see Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006) ("There is caselaw authority that the mislabeling of a finding of fact as a conclusion of law, or vice versa, is not determinative of the true nature of the item.") (citing *Graphic Arts Educ. Found., Inc. v. State*, 240 Minn. 143, 145-46, 59 N.W.2d 841, 844 (1953)); 2 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 52.5 (2004)), *review denied* (Minn. May 16, 2006).

Generally, the district court's failure to make findings on relevant statutory factors requires a remand. *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (remanding maintenance question because findings were inadequate to allow review). *But see In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990) (allowing independent review of record under extraordinary circumstances); *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand and affirming the district court in a child custody case where the district court failed to make adequate findings of fact, but "from reading the files, the record, and the court's findings, on remand the [district] court would undoubtedly make findings that comport with the statutory language" and reach the same result).

b. Stipulations

"Whether there is a substantial change in circumstances rendering an existing support obligation unreasonable and unfair generally requires comparing the parties' circumstances at the time support was last set or modified to their circumstances at the time of the motion to modify. Unless a support order provides a baseline for future modification motions by reciting the parties' then-existing circumstances, the litigation of a later motion to modify that order becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified." *Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (citations omitted); *see Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (noting in context of motion to modify stipulated maintenance award that stipulation identifies "baseline circumstances" against which claims of changed circumstances are evaluated).

4. Reopening of Judgment

Whether to reopen a dissolution judgment under Minn. Stat. § 518.145, subd. 2 (2010), is discretionary with the district court. *See Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996) (reviewing refusal to reopen for abuse of discretion); *Clark v. Clark*, 642 N.W.2d 459, 465 (Minn. App. 2002) (reciting general rule); *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001) (reviewing decision to reopen judgment for abuse of discretion), *review denied* (Minn. Feb. 21, 2001).

The district court's decision regarding whether to reopen a judgment will be upheld unless the district court abused its discretion; and the district court's findings as to whether the judgment was prompted by mistake, duress, or fraud will not be set aside unless they are clearly erroneous. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998).

"A district court's decision to reopen the judgment and decree based on fraud on the court will be sustained absent an abuse of discretion. If there is evidence to support the district court's decision, an abuse of discretion will not be found." *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009) (citations omitted).

The standard for reviewing whether a moving party made a prima facie case that a dissolution judgment was based on fraud and that there should be an evidentiary hearing to address whether to reopen the judgment is analogous to the review of a grant of summary judgment. *See Doering v. Doering*, 629 N.W.2d 124, 128-32 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001); *see Thompson v. Thompson*, 739 N.W.2d 424, 429-30 (Minn. App. 2007) (stating, in context of reviewing whether district court should have granted an evidentiary hearing on motion to reopen dissolution judgment because it was no longer equitable to enforce judgment, that "[w]hether to hold an evidentiary hearing on a motion generally is a discretionary decision of the district court, which we review for an abuse of discretion").

5. Abuse of Discretion

"Among other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (internal quotation marks and citations omitted).

"A district court abuses its discretion when it makes findings unsupported by the evidence or when it improperly applies the law." *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009), *appeal dismissed* (Minn. Feb. 1, 2010); *see Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997).

"An abuse of discretion occurs when the district court resolves the matter in a manner that is 'against logic and the facts on [the] record.'" *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 474 (Minn. App. 2004) (quoting *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984)).

"Misapplying the law is an abuse of discretion." *Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009); *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009) (stating, in the context of a child-support dispute, that "[t]he [district] court abuses its discretion if it erroneously applies the law to the case").

B. PROPERTY DIVISION

1. Identifying Marital and Nonmarital Property

"Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the [district] court's underlying findings of fact. However, if [the reviewing court is] left with the definite and firm conviction that a mistake has been made, [it] may find the [district] court's decision to be clearly erroneous, notwithstanding the existence of evidence to support such findings." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997) (quotation and citation omitted); *see Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008) (stating that "[appellate courts] independently review the issue of whether property is marital or nonmarital, giving deference to the district court's findings of fact"); *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003) ("Determining whether property is marital or nonmarital . . . is an issue over which [appellate courts] exercise independent review, though deference is given to the district court's findings of fact.").

"When marital and nonmarital assets have been commingled, the party asserting the nonmarital claim must adequately trace the nonmarital funds in order to establish their nonmarital character. Whether a nonmarital interest has been traced is also a question of fact." *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009) (citation omitted).

2. Marital Property

a. Valuing Property

A district court's valuation of an item of property is a finding of fact, and it will not be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001); *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975).

An appellate court does not require the district court to be exact in its valuation of assets. "[I]t is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979) (citing *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975)).

b. Division of Marital Property

"A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion. [An appellate court] will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted); *see Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009) (stating that a district court has "broad discretion regarding the division of property" and that its

division of property "will only be reversed on appeal if the [district] court abused its discretion"); *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005) ("District courts have broad discretion over the division of marital property and appellate courts will not alter a district court's property division absent a clear abuse of discretion or an erroneous application of the law.") (citing *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000); *Ebnet v. Ebnet*, 347 N.W.2d 840, 842 (Minn. App. 1984)).

A district court abuses its discretion in dividing property if it resolves the matter in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Pension division is generally discretionary with the district court. *Faus v. Faus*, 319 N.W.2d 408, 413 (Minn. 1982); *Johnson v. Johnson*, 627 N.W.2d 359, 362 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

A district court has broad discretion in dividing property and setting reasonable valuation dates. *Desrosier v. Desrosier*, 551 N.W.2d 507, 510 (Minn. App. 1996).

Whether to consider the tax consequences of a property distribution lies within the district court's discretion. *Maurer v. Maurer*, 623 N.W.2d 604, 608 (Minn. 2001); *see Miller v. Miller*, 352 N.W.2d 738, 744 (Minn. 1984); *O'Brien v. O'Brien*, 343 N.W.2d 850, 853-54 (Minn. 1984).

"[W]hether disability funds are income or marital property is a question of law, subject to de novo review." *Walswick-Boutwell v. Boutwell*, 663 N.W.2d 20, 22 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003).

C. SPOUSAL MAINTENANCE

An appellate court reviews a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989); *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982).

An appellate court reviews a district court's decision regarding whether to modify an existing maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 710 (Minn. 1997); *see also Claybaugh v. Claybaugh*, 312 N.W.2d 447, 449 (Minn. 1981) (stating that "[a]lthough the [district] court is vested with broad discretion to determine the propriety of a modification, we have suggested that [district] courts exercise that discretion carefully and only reluctantly alter the terms of a stipulation governing maintenance").

A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569

N.W.2d 199, 202 & n.3 (Minn. 1997) (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

"Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); *see* Minn. R. Civ. P. 52.01 (stating that findings of fact "shall not be set aside unless clearly erroneous").

"A district court's determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous." *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004).

"[The appellate courts] review[] questions of law related to spousal maintenance de novo." *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009).

The district court's decision regarding the effective date of the modification will be reviewed for an abuse of discretion if the statutory conditions for retroactive modification of maintenance are met. *Kemp v. Kemp*, 608 N.W.2d 916, 920 (Minn. App. 2000).

D. CHILDREN

1. Termination of Parental Rights

"Jurisdiction in juvenile court matters is a question of law, reviewed de novo." *In re Welfare of Children of A.I. (Deceased)*, 779 N.W.2d 886, 894 (Minn. App. 2010), *pet. for review dismissed* (Minn. Apr. 20, 2010).

"Interpretation of a statute involves a question of law, which is subject to de novo review." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54 (Minn. 2004).

a. Involuntary Termination of Parental Rights

"[Appellate courts] review the termination of parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous. We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted).

On review, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of

witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The reviewing court closely inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998).

An appellate court "exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

"[O]n appeal in a termination of parental rights case, while we carefully review the record, we will not overturn the [district] court's findings of fact unless those findings are clearly erroneous." *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995).

The Indian Child Welfare Act requires that parental rights of Native Americans may be terminated only if supported by "evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent . . . is likely to result in serious emotional or physical damage to the child." *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980) (citing 25 U.S.C.A. § 1912(f)).

"The question of whether appellant retained any parental rights which could be terminated through a TPR proceeding after she executed a delegation of parental authority involves the application of a statute to undisputed facts, which is a question of law we review de novo." *In re Welfare of Child of T.C.M.*, 758 N.W.2d 340, 346 (Minn. App. 2008).

A district court's determination of whether a parent has rebutted a presumption of palpable unfitness created by Minn. Stat. § 260C.301, subd. 1(b)(4) (2010), is a finding of fact that, on appeal, is reviewed for whether it is supported by substantial evidence and is not clearly erroneous. *See In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 544 (Minn. App. 2009) (stating "[y]et the district court concluded [that the parents] failed to rebut the statutory presumption of palpable unfitness. Having reviewed the record evidence, we conclude that the district court's findings are supported by substantial evidence and are not clearly erroneous.").

"[D]etermination of a child's best interests 'is generally not susceptible to an appellate court's global review of a record,' and . . . 'an appellate court's combing through the record to determine best interests is inappropriate because it involves credibility determinations.'" *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)).

b. Voluntary Termination of Parental Rights

"In general, a voluntary termination order may be rescinded only upon a showing of fraud, duress, or undue influence. When a [district] court's findings in a termination case are challenged, appellate courts are limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous. As in all termination cases, our paramount concern is for the child's best interests." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997) (citations omitted).

Whether to allow a parent to withdraw a voluntary consent to a termination of parental rights is discretionary with the district court. *See In re Welfare of the Child of J.L.L.*, ___ N.W.2d ___, ___ 2011 WL 2519227, at *5 (Minn. App. June 27, 2011) (concluding that the district court "did not abuse its discretion in allowing [the parent] to withdraw her consent to a voluntary TPR"), *review denied* (Minn. July 28, 2011).

"The [district] court's finding of good cause [for a voluntary termination of parental rights] . . . must be upheld if supported by substantial evidence and not clearly erroneous. 'Good cause' under the voluntary termination statute exists under a variety of circumstances. . . . [T]he test is whether [the parent] had sound reasons for consenting at the time of termination—a determination which is not restricted by the existence of cause for *involuntary* termination." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 485-86 (Minn. 1997) (citations omitted).

2. Child in Need of Protection or Services

"We are . . . bound by a very deferential standard of review [of factual findings on appeal from a district court's CHIPS determination]." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (Minn. App. 2009).

"Findings in a CHIPS proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence. Under the 'clearly erroneous' portion of this court's review of the district court's findings, a district court's individual fact-findings will not be set aside unless the review of the entire record leaves the court with the definite and firm conviction that a mistake has been made." *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998) (quotation and citations omitted); *see In re A.R.M.*, 611 N.W.2d 43, 50 (Minn. App. 2000) (stating "[f]indings in CHIPS proceedings are not reversed unless clearly erroneous or unsupported by substantial evidence").

3. Custody

a. Generally

A district court has broad discretion to provide for the custody of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984); *In re Best Interest of M.R.P.-C.*, 794 N.W.2d 373, 378 (Minn. App. 2011).

"Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985).

A district court's findings of fact will be sustained unless they are clearly erroneous. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985); *see* Minn. R. Civ. P. 52.01 (stating that findings of fact are not set aside unless clearly erroneous).

"Even though the [district] court is given broad discretion in determining custody matters, it is important that the basis for the court's decision be set forth with a high degree of particularity." *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989) (quotation omitted).

The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

A district court's decision regarding whether to order a custody report will not be altered on appeal absent an abuse of discretion. *J.W. by D.W. v. C.M.*, 627 N.W.2d 687, 696 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

"The district court has broad discretion in making child custody, parenting time, and child-support determinations and in deciding whether to grant recusal motions." *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002).

"[A] district court has an affirmative obligation to inquire into whether [the Indian Child Welfare Act] applies to a custody determination when it has reason to believe that the child subject to the determination is an Indian child as defined by the act." *In re Best Interest of M.R.P.-C.*, 794 N.W.2d 373, 379 (Minn. App. 2011).

b. Modification

On appeal from a district court's denial, without an evidentiary hearing, of motions to modify custody and motions to restrict parenting time, this court

> review[s] three discrete determinations. First, we review de novo whether the district court properly treated the allegations in the moving party's affidavits as true, disregarded the contrary allegations in the nonmoving party's affidavits, and considered only the explanatory allegations in the nonmoving party's affidavits. Second, we review for an abuse of discretion the district court's determination as to the existence of a prima facie case for the modification or restriction. Finally, we review de novo whether the district court properly determined the need for an evidentiary hearing.

Boland v. Murtha, 800 N.W.2d 179, 185 (Minn. App. 2011).

"A district court is required under section 518.18(d) to conduct an evidentiary hearing only if the party seeking to modify a custody order makes a prima facie case for modification." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008); *see Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) ("Whether a party makes a prima facie case to modify custody is dispositive of whether an evidentiary hearing will occur on the motion. A district court, however, has discretion in deciding whether a moving party makes a prima facie case to modify custody." (citations omitted)).

c. Joint Physical Custody

In determining the nature of a stipulated custody arrangement, the label put on the arrangement by the parties and adopted by the district court is binding. *Nolte v. Mehrens*, 648 N.W.2d 727, 730 (Minn. App. 2002). "Although it could be argued that some earlier caselaw indicates that discerning whether a physical-custody award is sole or joint requires an examination of the amount of time the parties spend with their child, [*Ayers v. Ayers*, 508 N.W.2d 515 (Minn. 1993)] and its progeny have superseded such cases." *Id.* at 730 n.3.

d. Removal

"Appellate review of custody modification and removal cases is limited to considering whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. Appellate courts set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility. Findings of fact are clearly erroneous where an appellate court is left with the

definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotations and citations omitted); *see Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996); *Rutz v. Rutz*, 644 N.W.2d 489, 492-93 (Minn. App. 2002), *review denied* (Minn. July 16, 2002).

e. Locale/*LaChapelle* Restrictions

"As a threshold issue, we consider whether the locale restriction in the district court's custody order is valid. Appellate review of custody determinations is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. District courts have broad discretion in determining custody matters, and we agree with the recognition of the court of appeals in *Dailey v. Chermak* 'that there is no absolute prohibition under Minnesota law against awarding child custody on the condition of maintaining a specific geographic residence for the child, as long as that residence is shown clearly and genuinely to serve the child's best interests,' 709 N.W.2d 626, 630 (Minn. App. 2006), *review denied* (Minn. May 16, 2006)." *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008) (other quotations and citations omitted).

Addressing a district court's ability to place in-state limits on a child's residence, this court has stated:

> The bedrock principle underlying any decision affecting the custody of minor children is that their best interests must be protected and fostered. A child's best interests are the fundamental focus of custody decisions. In determining issues of custody and residence under the authority granted in Minn. Stat. § 518.17, subd. 3(a)(2) [(2010)], the district court enjoys broad discretion. The appellate courts will not reverse the district court's custody decision absent a showing of a clear abuse of discretion. The district court abuses its discretion if its findings are clearly erroneous. The court also abuses its discretion if its findings are insufficient to support its custody ruling.

Schisel v. Schisel, 762 N.W.2d 265, 270 (Minn. App. 2009) (citations omitted).

f. Third-Party Custody & Visitation

"Appellate review of custody determinations is generally limited to determining whether the district court has abused its discretion. However, the interpretation and construction of statutes are questions of law that [appellate courts] review de novo." *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006) (citation omitted); *see In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002) ("District courts have broad discretion to determine matters of custody. Appellate

review of custody determinations is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. When determining whether findings are clearly erroneous, an appellate court views the record in the light most favorable to the [district] court's findings. As a general matter, appellate courts review questions of law de novo." (citations omitted)).

4. Parenting Time

"In 2000, legislation was passed replacing the term 'visitation' with 'parenting time' and allowing parties to create 'parenting plans.' 2000 Minn. Laws ch. 444, art. 1, §§ 1-8. Minnesota statutes now refer to parenting time, not visitation." *In re Welfare of B.K.P.*, 662 N.W.2d 913, 914 n.1 (Minn. App. 2003); *see Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010) (stating "[t]his dispute concerns allocation of parenting time, formerly known as visitation, *see* 2000 Minn. Laws ch. 444, art. 1, §§ 1-8 (changing visitation provisions to parenting-time provisions)").

"Parenting plans must include a number of elements, one of which is a schedule of the time each parent spends with a child." *In re Welfare of B.K.P.*, 662 N.W.2d 913, 914 n.1 (Minn. App. 2003).

The district court has broad discretion in deciding parenting-time questions based on the best interests of the child and will not be reversed absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995); *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002); *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001).

"A district court abuses [its] discretion [regarding parenting time] by making findings unsupported by the evidence or improperly applying the law." *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010) (citing *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985)).

A district court's findings of fact, on which a parenting-time decision is based, will be upheld unless they are clearly erroneous. *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978).

"Determining the legal standard applicable to a change in parenting time is a question of law and is subject to de novo review." *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009).

"It is well established that the ultimate question in all disputes over visitation is what is in the best interest of the child." *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984), *review denied* (Minn. June 12, 1984).

"Substantial modifications of visitation rights require an evidentiary hearing when, by affidavit, the moving party makes a prima facie showing that visitation is likely to

endanger the child's physical or emotional well being. Insubstantial modifications or adjustments of visitation, on the other hand, do not require an evidentiary hearing and are appropriate if they serve the child's best interests." *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001) (citations omitted), *review denied* (Minn. Oct. 24, 2001).

5. Child Support

Note: Before the effective date of the 2006 amendments of the child-support statutes, child support was governed by the child-support guidelines of Minn. Stat. § 518.551 and related provisions in chapter 518. Most of the cases cited below involve review of child-support decisions made under those child-support guidelines, related statutes, and their predecessors. In 2006, the child-support guidelines were replaced by the income-shares child-support calculations, and most of the child-support-related statutes were removed from chapter 518 and codified in what is now chapter 518A (2010). Generally, the provisions of the 2006 amendments of the child-support statutes became effective January 1, 2007, with the new provisions applying to all child-support orders in effect before January 1, 2007, except that (a) "[t]he provisions [of the new statute] used to calculate [the] parties' [child-]support obligations apply to actions or motions filed after January 1, 2007"; and (b) the provisions of the statute "used to calculate [the] parties' support obligations apply to actions or motions for past support or reimbursement filed after January 1, 2007." 2006 Minn. Laws ch. 280, § 44, at 1145. As of the release of this document, there is still limited published authority addressing the new income-shares child-support statutes.

a. In General

The district court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion when it sets support in a manner that is against logic and the facts on record or it misapplies the law. *See id.* (addressing the setting of support in manner that is against logic and facts on record); *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998) (addressing an improper application of law).

"The district court's determination of net income must be based in fact and it will not be overturned unless it is clearly erroneous. If the court's determination of income is challenged on appeal, we look to both the court's findings and the evidence of record to ascertain whether there has been clear error. We are unable to conduct a meaningful review if an essential finding has been omitted." *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009) (citations omitted).

Whether a source of funds is considered to be income for child-support purposes is a legal question reviewed de novo. *Sherburne Cnty. Soc. Servs. ex rel. Schafer v. Riedle*, 481 N.W.2d 111, 112 (Minn. App. 1992).

Whether distributions from subchapter-S corporations should be treated as income for child-support purposes is generally treated as a question of fact. *Williams v. Williams*, 635 N.W.2d 99, 103 (Minn. App. 2001).

Determinations of past child support due under Minn. Stat. § 257.66, subd. 4 are reviewed under an abuse-of-discretion standard. *LaChapelle v. Mitten*, 607 N.W.2d 151, 166 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

An appellate court will not reverse a district court's decision denying additional child support under Minn. Stat. § 256.87 absent an abuse of discretion. *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998). It is an abuse of discretion when the district court improperly applies the law to the facts. *Id.* (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

Whether to require a child-support obligor to provide life insurance on the obligor's life to insure his or her support obligation is discretionary with the district court. *Hunley v. Hunley*, 757 N.W.2d 898, 900-01 (Minn. App. 2008).

Allocation of federal-tax exemptions is discretionary with the district court. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 449 (Minn. App. 2002).

Interpreting the parenting-expense-adjustment statute "is a legal issue reviewed de novo." *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009).

"Whether a parent is voluntarily unemployed is a finding of fact, which we review for clear error." *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009).

b. Child Support Magistrates

On appeal from a child-support magistrate's order which has not been reviewed by the district court, this court uses the same standard to review issues as would be applied if the order had been issued by a district court. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009); *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000); *see Putz v. Putz*, 645 N.W.2d 343, 348 (Minn. 2002) (wherein supreme court, in a case where the CSM's ruling was not reviewed by the district court, stated that it had "never addressed" the question of the proper standard for reviewing a CSM's decision but nonetheless applied an abuse-of-discretion standard, noting that "the court of appeals applied the abuse of discretion standard and the parties agree that it is the appropriate standard of review").

If there is district-court review of a child-support magistrate's decision, "[t]he district court reviews the CSM's decision de novo." *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001).

"[T]o the extent the reviewer of the CSM's original decision affirms the CSM's original decision, that original decision becomes the decision of the reviewer." *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004).

On appeal from a child support magistrate's ruling that has been affirmed by the district court, the standard of review is the same standard as would have been applied if the decision had been made by a district court in the first instance. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002).

"Failure to submit a transcript to the district court for review of the CSM's decision precludes consideration of the transcript on appeal because the transcript is not part of the record on appeal." *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001).

c. Joint Physical Custody and Child Support

"[W]hen parents stipulate to a physical-custody arrangement and the district court adopts that arrangement, the dispositive factor in determining whether the arrangement establishes sole physical custody for one parent or joint physical custody for both parents, and therefore whether it is presumptively appropriate to apply the [*Hortis/Valento*] child support formula, is the district court's description of the physical-custody arrangement." *Nolte v. Mehrens*, 648 N.W.2d 727, 730 (Minn. App. 2002).

"We apply the abuse-of-discretion standard to the district court's application of [the] *Hortis*/*Valento* [formula]." *Schisel v. Schisel*, 762 N.W.2d 265, 273 (Minn. App. 2009).

d. Modification of Child Support

Whether to modify child support is discretionary with the district court, and its decision will be altered on appeal only if it resolved the matter in a manner that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002); *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986).

A district court has discretion to set the effective date of a child-support modification. *Finch v. Marusich*, 457 N.W.2d 767, 770 (Minn. App. 1990); *see Bauerly v. Bauerly*, 765 N.W.2d 108, 111 (Minn. App. 2009) (same).

"[M]odification of support is generally retroactive to the date the moving party served notice of the motion on the responding party[,]" and when no statutory exception to the general rule applied and there was no indication that the district court had exercised its discretion to make a child-support modification effective as of some other date, modification would be effective as of the date the motion was served. *Bormann v. Bormann*, 644 N.W.2d 478, 482-83 (Minn. App. 2002).

6. Parentage/Adoption/Name Change

"[I]nterpretation of the Minnesota Parentage Act (MPA) is a question of law this court reviews de novo." *Dorman v. Steffen*, 666 N.W.2d 409, 411 (Minn. App. 2003).

Standing to bring a paternity action is "an issue of statutory interpretation reviewed de novo." *Zentz v. Graber*, 760 N.W.2d 1, 4 (Minn. App. 2009), *review denied* (Minn. Mar. 31, 2009); *see also In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011); *Witso v. Overby*, 627 N.W.2d 63, 65-66 (Minn. 2001).

An appellant's "fail[ure] to challenge" the district court's "independent, procedural basis" for its ruling granting an adoption was "fatal to her appeal." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 577 (Minn. App. 2010).

"We review a district court's grant of a request to change a child's name for abuse of discretion. A district court abuses its discretion when evidence in the record does not support the factual findings, the court misapplied the law, or the court settles a dispute in a way that is against logic and the facts on record." *Foster v. Foster*, ___ N.W.2d ___, ___, 2011 WL 2518969, at *1 (Minn. App. June 27, 2011) (citation and quotation omitted).

E. ATTORNEY FEES (Minn. Stat. § 518.14, subd. 1 (2010))

1. Need-Based Attorney Fees

In the context of reviewing a need-based award of attorney fees, the Minnesota Supreme Court has stated: "The standard of review for an appellate court examining an award of attorney fees is whether the district court abused its discretion." *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). *But cf.* Minn. Stat. § 518.14, subd. 1 (2010) (stating that the district court "shall" award need-based attorney fees if the statutory requirements are met); *Holmberg v. Holmberg*, 588 N.W.2d 720, 727 (Minn. 1999) (stating that Minn. Stat. § 518.14, subd. 1, "requires the court to award attorney fees if the fees are necessary to allow a party to continue an action brought in good faith, the party from whom fees are requested has the means to pay the fees, and the party seeking fees cannot pay the fees"). *See generally Geske v. Marcolina*, 624 N.W.2d 813, 816-19 (Minn. App. 2001) (addressing 1990 amendments to Minn. Stat. § 518.14, as well as recovery of attorney fees under Minn. Stat. § 518.14, subd. 1, in both district court and appellate court).

2. Conduct-Based Attorney Fees

Conduct-based fee awards "are discretionary with the district court." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007); *see also* Minn. Stat. § 518.14, subd. 1 (2010) (stating that conduct-based fees "may" be awarded against a party who unreasonably contributes to the length or expense of the proceeding); *In re Adoption*

of T.A.M., 791 N.W.2d 573, 578 (Minn. App. 2010) (stating, in the context of reviewing a conduct-based award of attorney fees, that "[a]mong other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law") (quotations and citations omitted)).

F. CONTEMPT

In reviewing a district court's decision whether to hold a party in contempt, the factual findings are subject to reversal only if they are clearly erroneous, while the district court's decision to invoke its contempt powers is subject to reversal only for an abuse of discretion. *Mower Cnty. Human Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996).

In reviewing a contempt order, appellate courts consider whether the order "was arbitrary and unreasonable or whether it finds support in the record." *Gustafson v. Gustafson*, 414 N.W.2d 235, 237 (Minn. App. 1987) (quotation omitted).

"The district court has broad discretion to hold an individual in contempt. This court reviews a district court's decision to invoke its contempt power under an abuse-of-discretion standard." *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001) (citation omitted), *review denied* (Minn. Oct. 16, 2001).

G. PROTECTIVE ORDERS

1. Harassment Restraining Orders (Minn. Stat. § 609.748 (2010))

"Ultimately, the issuance of an HRO is reviewed for abuse of discretion." *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

The district court exercises its discretion in issuing a harassment restraining order. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

2. Domestic Abuse Orders for Protection (Minn. Stat. § 518B.01 (2010))

"'The decision to grant an OFP under the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 . . . is within the district court's discretion. A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law.'" *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (quoting *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 926-27 (Minn. App. 2006)); *see Sperle v. Orth*, 763 N.W.2d 670, 672-73 (Minn. App. 2009).

"Whether to grant relief under the Domestic Abuse Act (Minn. Stat. ch. 518B) is discretionary with the district court." *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn.

App. 2007); *see Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 926-27 (Minn. App. 2006).

"[I]n our review of an OFP, we review the record in the light most favorable to the district court's findings, and we will reverse those findings only if we are left with the definite and firm conviction that a mistake has been made. We will not reverse merely because we view the evidence differently. And we neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotations and citations omitted).

Absent sufficient evidence, we will reverse an order for protection issued under Minn. Stat. § 518B.01. *Bjergum v. Bjergum*, 392 N.W.2d 604, 606-07 (Minn. App. 1986).

"The Domestic Abuse Act, as a remedial statute, receives liberal construction but it 'may not be expanded in a way that does not advance its remedial purpose.'" *Sperle v. Orth*, 763 N.W.2d 670, 673 (Minn. App. 2009) (quoting *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992)).

Whether to grant an injunction is discretionary with the district court and its decision will not be altered on appeal unless the record shows that the district court abused its discretion. *Geske v. Marcolina*, 642 N.W.2d 62, 67 (Minn. App. 2002).

H. OTHER

An appellant's "fail[ure] to challenge" the district court's "independent, procedural basis" for its ruling granting an adoption was "fatal to her appeal." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 577 (Minn. App. 2010).

"Whether a person is a putative spouse is a question of fact[,]" the district court's resolution of which will not be set aside unless, upon review of the record, the appellate court is left with a definite and firm conviction that a mistake has been made. *Xiong v. Xiong*, 800 N.W.2d 187, 191 (Minn. App. 2011), *pet. for review filed* (Minn. July 1, 2011).

To be a putative spouse under Minn. Stat. § 518.055, a person must have a good faith but incorrect belief that he or she is a spouse. In Minnesota, the existence of a "good faith" belief is judged subjectively while the existence of a "reasonable belief" is measured objectively. Thus, whether a person is a putative spouse under Minn. Stat. § 518.055 is measured subjectively. *Xiong v. Xiong*, 800 N.W.2d 187, 191 (Minn. App. 2011), *pet. for review filed* (Minn. July 1, 2011).

"The interpretation of a statute or case law is . . . reviewed de novo." *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011).

Questions of statutory interpretation are reviewed de novo. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001); *see Dahlin v. Kroening*, 796 N.W.2d 503, 508 (Minn. 2011) (stating that "[w]hen interpreting the statutes, it is our role to rely on what the Legislature intended over what may appear to be supported by public policy").

"The applicability of a statute is an issue of statutory interpretation, which appellate courts review de novo." *Ramirez v. Ramirez*, 630 N.W.2d 463, 465 (Minn. App. 2001).

"Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court." *Branch v. Branch*, 632 N.W.2d 261, 263 (Minn. App. 2001).

"This court reviews purely legal issues, such as case law relied upon by the district court, de novo." *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

"Interpretation and application of procedural rules are legal issues that are reviewed de novo." *Clark v. Clark*, 642 N.W.2d 459, 464 (Minn. App. 2002).

Appellate courts defer to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that, on appeal, appellate courts "neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder").

Procedural and evidentiary rulings are within the district court's discretion and are reviewed for an abuse of that discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001).

"Among other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotations and citations omitted).

"Whether to receive evidence is discretionary with the district court." *J.W. by D.W. v. C.M.*, 627 N.W.2d 687, 697 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

"A petition for a writ of prohibition is the proper means of challenging a district court judge's denial of a notice of removal." *Ihde v. Ihde*, ___ N.W.2d ___, ___, 2011 WL 2519223, at *2 (Minn. App. June 27, 2011) (citing *McClelland v. Pierce*, 376 N.W.2d 217, 219 (Minn. 1985)).

Whether a district court should recuse from a case is discretionary with the district court. *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

"[W]e review de novo the question of whether federal law preempts state law." *Angell v. Angell*, 791 N.W.2d 530, 534 (Minn. 2010).

"Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

"Permissive intervention rulings are reviewed under an abuse-of-discretion standard." *J.W. by D.W. v. C.M.*, 627 N.W.2d 687, 691 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

If a district court has authority to vacate an order allowing transfer of a juvenile-protection case to tribal court, whether to do so is discretionary with the district court. *See In re Welfare of Children of R.A.J.*, 769 N.W.2d 297, 304 (Minn. App. 2009) (concluding, on appeal from an order vacating a transfer of a juvenile-protection case to tribal court, "that the district court did not abuse its discretion by vacating the transfer order").

"Uniform laws are interpreted to effect their general purpose to make uniform the laws of those states that enact them. Accordingly, we give great weight to other states' interpretations of a uniform law." *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (citation omitted); *see* Minn. Stat. § 645.22 (2010).

III. CIVIL – COMMITMENT

A. REVIEW OF DISTRICT COURT'S FINDINGS OF FACT

1. Findings on Elements of Commitment
Note: Standard of review is the same for all types of civil commitment

a. Mentally Ill – Minn. Stat. § 253B.02, subd. 13 (2010)

An appellate court will not reverse a district court's "findings unless they are clearly erroneous." *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995).

"An appellate court will not reverse a district court's findings of fact unless they are clearly erroneous." *In re Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003).

b. Mentally Ill and Dangerous – Minn. Stat. § 253B.02, subd. 17(a) (2010)

"Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witness." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

In upholding a district court decision that a person committed as mentally ill was no longer dangerous, the supreme court stated: "We believe that the evidence was such that, although the [district] court arguably was free to continue the commitment, the [district] court was not compelled to do so." *In re Colbert*, 454 N.W.2d 614, 615 (Minn. 1990) (reversing decision by court of appeals that held that the district court was clearly erroneous).

c. Developmentally Disabled – Minn. Stat. § 253B.02, subd. 14 (2010) (previously "Mentally Retarded")

"The [district] court's findings in support of its order for commitment will not be disturbed unless clearly erroneous." *In re Chey*, 374 N.W.2d 778, 780 (Minn. App. 1985).

d. Chemically Dependent – Minn. Stat. § 253B.02, subd. 2 (2010)

"The [district] court's findings as to this determination will not be set aside unless clearly erroneous." *In re May*, 477 N.W.2d 913, 915 (Minn. App. 1991).

"The [district] court's findings as to this determination will not be set aside unless clearly erroneous." *In re Heurung*, 446 N.W.2d 694, 696 (Minn. App. 1989).

e. Sexual Psychopathic Personality and Sexually Dangerous Person – Minn. Stat. § 253B.02, subds. 18b, 18c (2010)

"[D]rawing inferences from the facts is a matter assigned, in the first instance, to the district court." *In re Commitment of Travis*, 767 N.W.2d 52, 66 (Minn. App. 2009) (on discretionary review, reversing order for evidentiary hearing and discovery regarding claim that SPP and SDP statutes are unconstitutional and remanding for further proceedings on commitment petition).

"We review the district court's decision that [a person committed as an SDP] waived his rights for clear error." *In re Commitment of Giem*, 742 N.W.2d 422, 432 (Minn. 2007).

"Reviewing for clear error, we find sufficient evidence in the record to uphold the court's findings." *In re Linehan*, 557 N.W.2d 171, 190 (Minn. 1996), *vacated on other grounds and remanded*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999).

"We review the district court's factual findings under a clear-error standard." *In re Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006).

2. Findings on Less Restrictive Alternatives

a. Commitment as mentally ill, chemically dependent, or developmentally disabled – Minn. Stat. § 253B.09, subd. 2 (2010)

"In reviewing whether the least restrictive treatment program that can meet the patient's needs has been chosen, an appellate court will not reverse a district court's finding unless clearly erroneous." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003) (addressing continued commitment as mentally ill).

"A district court's decision as to placement will not be reversed unless clearly erroneous." *In re Kellor*, 520 N.W.2d 9, 12 (Minn. App. 1994) (addressing commitment as mentally ill), *review denied* (Minn. Sept. 28, 1994).

"Unless it is clearly erroneous, we must affirm the [district] court's finding that there was no suitable less restrictive treatment alternative." *In re King*, 476 N.W.2d 190, 193 (Minn. App. 1991) (addressing commitment of mentally ill person to the state security hospital).

"We will not reverse [a finding that a particular facility was the least restrictive alternative] unless it is clearly erroneous." *In re Cieminski*, 374 N.W.2d 289, 292 (Minn. App. 1985) (addressing commitment as mentally retarded, now referred to as developmentally disabled), *review denied* (Minn. Nov. 18, 1985).

b. Less restrictive treatment options for commitment as mentally ill and dangerous, SPP or SDP – Minn. Stat. §§ 253B.18, subd. 1(a) (mentally ill and dangerous), .185, subd. 1(d) (SPP and SDP) (2010)

"[P]atients have the *opportunity* to prove that a less-restrictive treatment program is available, but they do not have the *right* to be assigned to it." *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001) (discussing less restrictive option in SPP/SDP commitment), *review denied* (Minn. Dec. 19, 2001); *see In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001) (comparing previous version of statute with current version of statute as to least restrictive alternative option for indeterminate commitment), *review denied* (Minn. Apr. 17, 2001); *cf. In re Senty-Haugen*, 583 N.W.2d 266, 269 (Minn. 1998) (holding, under previous version of statute, there was no requirement that those committed as SPP/SDP be committed to the least restrictive alternative).

3. Findings Based on Expert Testimony

"Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

"The testimony in this case by the treating professionals, who were very familiar with respondent's condition, should have been given greater weight" than the testimony by the psychologist, "who had an inadequate amount of time to make an adequate evaluation of respondent." *Piotter v. Steffen*, 490 N.W.2d 915, 920 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992).

B. REVIEW OF DISTRICT COURT'S CONCLUSIONS OF LAW

"We conclude that the [district] court's findings are insufficient to support the conclusion that [the proposed patient] is a mentally ill person, as defined by the Commitment Act." *In re McGaughey*, 536 N.W.2d 621, 624 (Minn. 1995) (review of mentally ill determination under Minn. Stat. § 253B.02, subd. 13).

"The question before us is whether the record supports, by clear and convincing evidence, the [district] court's conclusion that appellant meets the second and third elements [for commitment as a psychopathic personality.] This is a question of law which we review de novo." *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994).

"Justiciability issues receive de novo review." *In re Commitment of Travis*, 767 N.W.2d 52, 58 (Minn. App. 2009).

"We review de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003) (addressing continued commitment as mentally ill).

"In reviewing a commitment, we are limited to an examination of whether the district court complied with the requirements of the commitment act." *In re Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003) (reviewing district court's mentally ill determination under Minn. Stat. § 253B.02, subd. 13(a)). "We review de novo the question of whether the evidence is sufficient to meet the standard of commitment." *Id.*

C. REVIEW OF JUDICIAL APPEAL PANEL DECISION

"Statutory construction is a legal issue, which we review de novo." *Coker v. Ludeman*, 775 N.W.2d 660, 663 (Minn. App. 2009) (addressing relevant burden of proof in judicial appeal panel proceeding), *review dismissed* (Minn. Feb. 24, 2010).

"Issues of statutory interpretation are reviewed de novo." *Rydberg v. Goodno*, 689 N.W.2d 310, 313 (Minn. App. 2004) (addressing issue of pass-eligible status in psychopathic-personality commitment).

"Findings of fact will not be reversed if the record as a whole sustains those findings." *Rydberg v. Goodno*, 689 N.W.2d 310, 313 (Minn. App. 2004) (addressing issue of pass-eligible status in psychopathic-personality commitment).

"The appeal panel's reliance upon the testimony of [certain witnesses] was clearly erroneous. The vast weight of the evidence, which was provided by personnel at the security hospital who interacted with and treated respondent, was apparently ignored by the appeal panel, and requires denial of the transfer" of respondent, who was committed as mentally ill and dangerous, from the security hospital to an open hospital. *Piotter v. Steffen*, 490 N.W.2d 915, 920 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992).

IV. CRIMINAL – GENERAL

A. GENERAL STANDARDS OF REVIEW

1. Questions of Law

The constitutionality of a statute presents a question of law that this court reviews de novo. *State v. Wolf*, 605 N.W.2d 381, 386 (Minn. 2000).

"The constitutionality of an ordinance is a question of law, which this court reviews de novo." *State v. Botsford*, 630 N.W.2d 11, 15 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001).

Whether a statute has been properly construed is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

"The interpretation of the rules of criminal procedure is a question of law subject to de novo review." *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005).

2. Questions of Fact

A reviewing court accepts the district court's factual findings concerning the circumstances under which a statement was given to the police unless the findings are clearly erroneous. *State v. Williams*, 535 N.W.2d 277, 286 (Minn. 1995).

"The [district] court's factual findings are subject to a clearly erroneous standard of review[.]" *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996) (reviewing the substantiality of violation of *Scales* recording requirement), *review denied* (Minn. Nov. 20, 1996).

District court factual findings adopted verbatim from one of the parties' proposed findings are reviewed under the clearly erroneous standard. *Dukes v. State*, 621 N.W.2d 246, 258-59 (Minn. 2001) ("We will devote special care not in the test that we apply to a particular finding of fact—individual findings will only be reversed if clearly erroneous—but in the volume of evidence we sift in judging the correctness of such findings." (quotation omitted)).

3. Mixed Questions of Fact and Law

The district court's application of statutory criteria to the facts is a question of law subject to de novo review. *State v. Bunde*, 556 N.W.2d 917, 918 (Minn. App. 1996) (reviewing legality of arrest outside officer's jurisdiction).

A mixed question of law and fact requires the appellate court "to apply the controlling legal standard to historical facts" as determined by the district court. *State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998) (footnote omitted). An appellate court

reviews the district court's factual findings under the clearly erroneous standard, but independently reviews the district court's legal determinations. *Id.*

4. Other

"A respondent can raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted." *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003).

B. PRETRIAL MATTERS

1. Suppressing Evidence

a. In General

"[W]hen reviewing a pre-trial order suppressing evidence where the facts are not in dispute and the [district] court's decision is a question of law, the reviewing court may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

In reviewing an alleged *Franks* search-warrant-application deficiency, the court reviews for clear error the district court's findings on whether there was a statement or omission that was false or in reckless disregard of the truth. *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010). The court reviews de novo whether the alleged misrepresentations or omissions was material to the probable cause determination. *Id.*

b. Critical Impact

If the state appeals pretrial suppression orders, it "must 'clearly and unequivocally' show both that the [district] court's order will have a 'critical impact' on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quoting *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995)). "[T]he critical impact of the suppression must be first determined before deciding whether the suppression order was made in error." *Id.*

The standard for critical impact is that "the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987).

"When analyzing critical impact, an appellate court should first examine all the admissible evidence available to the state in order to determine what impact the absence of the suppressed evidence will have. The analysis should not stop there however. The court should go on to examine the inherent qualities of the suppressed evidence itself, its relevance and probative force, its chronological proximity to the alleged crime, its effect in filling gaps in the evidence viewed as a whole, its quality as a perspective of events different than those otherwise available, its clarity and amount of detail and its origin. Suppressed evidence particularly unique in nature and quality is more likely to meet the critical impact test." *In re Welfare of L.E.P.*, 594 N.W.2d 163, 168 (Minn. 1999) (citations omitted).

The critical impact test applies to pretrial appeals from discovery orders. *State v. Underdahl*, 767 N.W.2d 677, 682-83 (Minn. 2009).

c. Suppression of Confessions and Admissions

The district court's factual determination of whether a defendant invoked the right to counsel is accepted unless clearly erroneous. *State v. Miller*, 573 N.W.2d 661, 671 (Minn. 1998).

Factual determinations regarding a suspect's invocation of his right to counsel or his right to silence are reviewed for clear error. *State v. Chavarria-Cruz*, 784 N.W.2d 355, 363 (Minn. 2010). The application of the reasonable-officer standard is reviewed de novo. *Id.*

Application of the rule that police must "stop and clarify" an equivocal request for silence is reviewed de novo, but the clearly erroneous standard applies to the factual findings involved. *State v. Ortega*, 798 N.W.2d 59, 70 (Minn. 2011).

"In cases in which the claim is made that a confession was involuntary or that the waiver of the *Miranda* rights was involuntary, the [district] court must make a subjective factual inquiry into all the circumstances surrounding the giving of the statement. On appeal this court will not reverse any findings of fact unless they are clearly in error, but this court will make an independent determination of voluntariness on the facts as found." *State v. Hardimon*, 310 N.W.2d 564, 567 (Minn. 1981).

In independently determining whether a confession or statement was involuntary or coerced, a reviewing court considers all relevant factors including age, maturity, intelligence, education, experience, ability to comprehend, length and legality of detention, nature of interrogation, physical deprivations, and limits on

access to counsel, family and friends. *State v. Blom*, 682 N.W.2d 578, 614 (Minn. 2004); *State v. Camacho*, 561 N.W.2d 160, 168, 169-70 (Minn. 1997).

Where evidence suggests a defendant's custodial statement may be involuntary and should be suppressed, a district court should make specific factual findings at the omnibus hearing. *State v. Buchanan*, 431 N.W.2d 542, 551 (Minn. 1988). A reviewing court will not reverse those factual findings unless they are clearly erroneous, but will "make its own independent evaluation of whether the waiver was knowing, intelligent and voluntary, based on the facts as found." *Id.* at 552.

"In a pre-trial suppression hearing at which the defendant seeks suppression of a confession on the ground that the confession was involuntary, the state has the burden of proving voluntariness by a fair preponderance of the evidence. It is the [district] court's role, in such a case, to resolve any evidentiary disputes as to the historical facts. The appellate court is not bound by the [district] court's determination of whether or not the confession was voluntary. Rather, its duty is to independently determine, on the basis of all factual findings that are not clearly erroneous, whether or not the confession was voluntary." *State v. Thaggard*, 527 N.W.2d 804, 807 (Minn. 1995) (quotation and citations omitted).

2. Probable Cause

A dismissal for lack of probable cause is appealable if it is based on a legal determination. *State v. Ciurleo*, 471 N.W.2d 119, 121 (Minn. App. 1991). As with other legal determinations, it is reviewed de novo. *State v. Linville*, 598 N.W.2d 1, 2 (Minn. App. 1999).

We review the district court's determination of probable cause to issue a search warrant to ensure that there was a substantial basis to conclude that probable cause existed. *State v. Harris*, 589 N.W.2d 782, 787-88 (Minn. 1999). A substantial basis in this context means a "fair probability," given the totality of the circumstances, "that contraband or evidence of a crime will be found in a particular place." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted).

Whether there is probable cause for a citizen's arrest depends on findings of fact that are reviewed for clear error under the clearly erroneous standard, but it is ultimately a question of law to be reviewed de novo. *State v. Horner*, 617 N.W.2d 789, 795 (Minn. 2000).

The standard of review appropriate for an appellate court reviewing a district court's probable cause determination made upon issuing a warrant is the deferential, substantial-basis standard. *State v. Rochefort*, 631 N.W.2d 802, 805 (Minn. 2001).

3. Grand Jury Proceedings

"[T]he standard of review of the dismissal of an indictment is not clear and unequivocal error on the part of the [district] court. The proper focus of inquiry is the grand jury's determination of probable cause to believe the alleged offenses occurred, with deference to the grand jury's factfinding role. A presumption of regularity attaches to a grand jury indictment and only in a rare case will an indictment be invalidated." *State v. Plummer*, 511 N.W.2d 36, 38 (Minn. App. 1994) (quotation omitted).

"A prosecutor's failure to disclose exculpatory evidence to the grand jury will require dismissal of the indictment if the evidence would have materially affected the grand jury proceeding. The effect on the grand jury proceeding must be judged after looking at all of the evidence that the grand jury received." *State v. Lynch*, 590 N.W.2d 75, 79 (Minn. 1999) (citation omitted).

"A criminal defendant bears a heavy burden when seeking to overturn a grand jury indictment, especially when the challenge is brought after the defendant has been found guilty beyond a reasonable doubt following a fair trial." *State v. Johnson*, 463 N.W.2d 527, 531 (Minn. 1990); *see also State v. Lynch*, 590 N.W.2d 75, 79 (Minn. 1999) (stating that a defendant convicted after a fair trial bears a heightened burden).

4. Guilty Plea

"[T]he 'ultimate decision' of whether to allow withdrawal under the 'fair and just' standard is 'left to the sound discretion of the [district] court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion.'" *State v. Kaiser*, 469 N.W.2d 316, 320 (Minn. 1991) (quoting *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989)).

A reviewing court will reverse the district court's determination of whether to permit withdrawal of a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

When credibility determinations are crucial in determining whether a guilty plea was accurate, voluntary, and intelligent, "a reviewing court will give deference to the primary observations and trustworthiness assessments made by the district court." *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

The interpretation and enforcement of plea agreements present issues of law subject to de novo review. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004); *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000).

5. Adverse Psychological Examinations

"There is [district] court discretion to order adverse psychological examinations in criminal cases, but the discretion should be used judiciously and in a balanced way." *State v. Elvin*, 481 N.W.2d 571, 574 (Minn. App. 1992) (affirming district court decision to deny defense request for adverse psychological examination of a victim), *review denied* (Minn. Apr. 29, 1992). A reviewing court will not reverse the district court absent an abuse of that discretion. *See id.*

6. Change of Venue

District courts have wide discretion in deciding motions for change of venue and we will sustain such decisions absent a clear abuse of discretion. *State v. Warren*, 592 N.W.2d 440, 447 n.6 (Minn. 1999).

"Before [a reviewing] court will reverse a conviction based on a denial of a change of venue motion, we must find not only that the [district] court abused [its] wide discretion, but also that the denial resulted in prejudice to the defendant." *State v. Chambers*, 589 N.W.2d 466, 473 (Minn. 1999); *see State v. Everett*, 472 N.W.2d 864, 866 (Minn. 1991) (affirming district court's denial of defendant's motion for a change of venue when defendant made no showing of actual prejudice).

7. Double Jeopardy

An appellate court reviews double-jeopardy issues de novo. *State v. Leroy*, 604 N.W.2d 75, 77 (Minn. 1999). But decisions to declare a mistrial sua sponte without the defendant's consent are reviewed for an abuse of discretion. *State v. Gouleed*, 720 N.W.2d 794, 800 (Minn. 2006).

8. Continuances

A ruling on a request for a continuance is within the district court's discretion and a conviction will not be reversed for denial of a motion for a continuance unless the denial is a clear abuse of discretion. *State v. Rainer*, 411 N.W.2d 490, 495 (Minn. 1987).

"The reviewing court must examine the circumstances before the [district] court at the time the motion [for a continuance] was made to determine whether the [district] court's decision prejudiced [the] defendant by materially affecting the outcome of the trial." *State v. Turnipseed*, 297 N.W.2d 308, 311 (Minn. 1980).

"In evaluating a request for a continuance, the test is whether the denial of a continuance prejudices the outcome of the trial." *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990).

9. Substitution of Counsel

The decision whether to grant a request for substitute counsel is within the district court's discretion. *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006).

10. Speedy Trial

"A speedy-trial challenge presents a constitutional question subject to de novo review." *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009).

11. Joinder and Severance of Defendants

In reviewing the district court's decision regarding the joinder of defendants, the appellate court makes "an independent inquiry into any substantial prejudice to defendants that may have resulted from their being joined for trial." *State v. Powers*, 654 N.W.2d 667, 674 (Minn. 2003) (quotation omitted); *see* Minn. R. Crim. P. 17.03, subd. 2 (giving district courts discretion regarding joinder of defendants, and providing factors that the court must consider when determining whether to join defendants). Severance claims are evaluated under the standard provided in Minn. R. Crim. P. 17.03, subd. 2(1). *Santiago v. State*, 644 N.W.2d 425, 444 (Minn. 2002).

11. Joinder of Offenses

The determination of whether offenses arose from a single behavioral incident so as to permit joinder depends on the facts and circumstances of the case. *State v. Jackson*, 615 N.W.2d 391, 394 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000). The ultimate question when offenses are improperly joined is one of prejudice. *State v. Profit*, 591 N.W.2d 451, 460 (Minn. 1999). If the evidence of each offense would have been admissible as *Spreigl* evidence in the trial of the others, there is no prejudice. *State v. Conaway*, 319 N.W.2d 35, 42 (Minn. 1982).

C. TRIAL MATTERS

1. Jury Selection

a. Peremptory Challenges

The district court has discretion to allow or deny the use of a peremptory challenge after the right to make the challenge has expired and before the entire jury has been impaneled. *State v. Kitto*, 373 N.W.2d 307, 310-11 (Minn. 1985).

The district court's erroneous denial of a peremptory challenge automatically entitles a defendant to a new trial without a showing of prejudice. *State v. Reiners*, 664 N.W.2d 826, 835 (Minn. 2003).

b. *Batson* Challenges

The district court's determination on a *Batson* challenge will not be reversed unless clearly erroneous. *State v. McDonough*, 631 N.W.2d 373, 385 (Minn. 2001).

Whether racial discrimination in the exercise of a peremptory challenge has been shown "is an essentially factual determination, which typically will turn largely on an evaluation by the [district] court of credibility." *State v. James*, 520 N.W.2d 399, 403-04 (Minn. 1994) (quotation omitted). "A [district] court's determination of the genuineness of the prosecutor's response is entitled to great deference on review." *Id.* at 404 (quotations omitted). The clearly erroneous standard of review applies to this factual determination. *Id.*

"[U]pon review of a district court's determination under step one of the *Batson* process that a prima facie showing of discrimination has not been established, we will reverse only in the face of clear error." *State v. White*, 684 N.W.2d 500, 507 (Minn. 2004).

"We are mindful of the unique position of a district court to determine, based on all relevant factors, whether the circumstances of the case raise an inference that the challenge was based upon race. We have consistently given deference to the district court's rulings on *Batson* issues, realizing that the record may not accurately reflect all relevant circumstances that may properly be considered." *State v. White*, 684 N.W.2d 500, 506 (Minn. 2004) (citations omitted).

Appellate courts give "considerable deference" to district court findings on whether a peremptory challenge was motivated by prohibited discriminatory intent because the issue typically requires an evaluation of the prosecutor's credibility. *State v. Johnson*, 616 N.W.2d 720, 725 (Minn. 2000). Appellate courts must determine whether the district court "abused its considerable discretion" in determining that a "prosecutor did not engage in purposeful discrimination." *Id.*

c. Challenges for Cause

The district court is in the best position to determine whether prospective jurors can be impartial because it hears their testimony and observes their demeanor. *State v. Drieman*, 457 N.W.2d 703, 708-09 (Minn. 1990). The district court's resolution of whether a prospective juror's protestation of impartiality is credible is a determination of credibility and demeanor and, therefore, is entitled to special deference. *State v. Logan*, 535 N.W.2d 320, 323 (Minn. 1995).

2. Trial Management

a. Sanctions for Discovery Violations

"[District] courts have broad discretion in imposing sanctions for violations of the discovery rules." *State v. Patterson*, 587 N.W.2d 45, 50 (Minn. 1998). The appellate court will not overturn the district court's ruling absent a clear abuse of discretion. *Id.* "Despite the [district] court's broad discretion, '[p]reclusion of evidence is a severe sanction which should not be lightly invoked.'" *Id.* (quoting *State v. Lindsey*, 284 N.W.2d 368, 374 (Minn. 1979)).

b. Trial in Absentia

The decision to proceed with trial in absentia is reviewed under an abuse-of-discretion standard. *State v. Cassidy*, 567 N.W.2d 707, 709 (Minn. 1997). The district court's factual findings will not be disturbed unless clearly erroneous. *Id.* at 709-10. The district court, however, has "only a narrow discretion" in deciding whether to proceed with trial in the defendant's absence. *Id.* at 710.

c. Restraints on Defendant

The decision to require a criminal defendant to wear restraints during trial is within the discretion of the district court and will not be overturned absent an abuse of discretion. *State v. Chambers*, 589 N.W.2d 466, 475 (Minn. 1999).

d. Unruly Defendant

The district court has broad discretion in dealing with "disruptive, contumacious, stubbornly defiant defendants." *State v. Richards*, 495 N.W.2d 187, 197 (Minn. 1992).

e. Mistrial

The denial of a motion for a mistrial is reviewed for abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003) (mistrial motion based on prosecutorial misconduct; *State v. Spann*, 574 N.W.2d 47, 52 (Minn. 1998) (mistrial based on prosecutorial misconduct in failing to provide discovery).

3. Evidentiary Rulings

a. In General

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that

appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

b. Harmless Error

If the district court has erred in excluding defense evidence, the error is harmless only if the reviewing court is "satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, a [reasonable] jury . . . would have reached the same verdict." *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994). But if there is a reasonable possibility that the verdict might have been different if the evidence had been admitted, then the error is prejudicial. *Id.*

If the district court has erred in admitting evidence, the reviewing court determines whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). If there is a reasonable possibility that the verdict might have been more favorable to the defendant without the evidence, then the error is prejudicial. *Id.*

In completing a "harmless error impact" analysis, the inquiry is not whether the jury could have convicted the defendant without the error; rather, we must determine what effect the error had on the jury's verdict, "and more specifically, whether the jury's verdict is 'surely unattributable' to [the error]." *State v. King*, 622 N.W.2d 800, 811 (Minn. 2001) (quoting *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997)).

In conducting this analysis, the reviewing court considers "the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it." *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002).

c. Plain Error

Where a defendant fails to object to the admission of evidence, our review is under the plain error standard. *See* Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "The plain error standard requires that the defendant show: (1) error; (2) that was plain; and (3) that affected substantial rights." *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002) (citing *Griller*, 583 N.W.2d at 740 (citing *Johnson v. United States*, 520 U.S. 461, 466-67, 117 S. Ct. 1544, 1548-49 (1997))). "If those three prongs are met, we may correct the error only if it 'seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.'" *Id.* (quoting *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001)). (In general, the term "forfeiture" applies to the failure to object, which permits only review for plain error. *See State v. Vance*, 734 N.W.2d 650,

654-55 (Minn. 2007). The term "waiver" refers to "affirmative waiver," which requires more than mere silence. *See id.* at 655).

d. Expert Witness Testimony

"The admission of expert testimony is within the broad discretion accorded [to] a [district] court, and rulings regarding materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence may be reversed only if the [district] court clearly abused its discretion." *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999) (quotation and citations omitted); *see also State v. Grecinger*, 569 N.W.2d 189, 194 (Minn. 1997) (stating that reversal requires "apparent error").

Appellate courts defer to the fact-finder's determination of weight and credibility of expert witnesses. *State v. Triplett*, 435 N.W.2d 38, 44 (Minn. 1989).

When reviewing the admission of expert testimony, appellate courts review de novo "whether a particular technique is generally accepted in the relevant scientific field, and review under an abuse-of-discretion standard whether an expert witness is qualified and the testimony is helpful to the jury." *State v. Pirsig*, 670 N.W.2d 610, 616 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004).

e. Identification Evidence

If an identification procedure is found to be unnecessarily suggestive, the court must determine under the "totality of the circumstances" whether the identification created "a very substantial likelihood of irreparable misidentification." *State v. Taylor*, 594 N.W.2d 158, 161 (Minn. 1999) (quoting *Simmons v. United States*, 390 U.S. 377, 384, 88 S. Ct. 967, 971 (1968)); *see also State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995).

Error in admission of tainted pretrial identification does not require a new trial if the state can show beyond a reasonable doubt that the error was harmless. *State v. Jones*, 556 N.W.2d 903, 913 (Minn. 1996).

f. Prior Bad Acts Evidence

A reviewing court will not reverse the district court's admission of evidence of other crimes or bad acts unless an abuse of discretion is clearly shown. *State v. Scruggs*, 421 N.W.2d 707, 715 (Minn. 1988). To prevail, an appellant must show error and the prejudice resulting from the error. *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

Evidence of other crimes or bad acts is characterized as "*Spreigl* evidence" after the supreme court's decision in *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). The admission of

Spreigl evidence lies within the sound discretion of the district court and will not be reversed absent a clear abuse of discretion. *State v. Spaeth*, 552 N.W.2d 187, 193 (Minn. 1996).

The district court's decision to admit similar-conduct or relationship evidence under Minn. Stat. § 634.20 in a domestic-abuse prosecution is reviewed for an abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004).

The admission of *Spreigl* evidence is less prejudicial if the trial is to the court rather than a jury. *Irwin v. State*, 400 N.W.2d 783, 786 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987).

If the district court erred in admitting evidence, the reviewing court determines whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). If there is a reasonable possibility that the verdict might have been more favorable to the defendant without the evidence, then the error is prejudicial. *Id.*

g. Impeachment by Prior Conviction

A district court's ruling on the impeachment of a witness by prior conviction is reviewed, as are other evidentiary rulings, under a clear abuse of discretion standard. *State v. Ihnot*, 575 N.W.2d 581, 584 (Minn. 1998). Whether the probative value of the prior convictions outweighs their prejudicial effect is a matter within the discretion of the district court. *State v. Graham*, 371 N.W.2d 204, 208 (Minn. 1985). The district court's decision will not be reversed absent a clear abuse of discretion. *Id.* at 209.

h. Hearsay Evidence and Confrontation

The district court's evidentiary rulings will generally not be reversed absent a clear abuse of discretion. *State v. Flores*, 595 N.W.2d 860, 865 (Minn. 1999) (reviewing hearsay ruling).

Whether the admission of evidence violates a defendant's rights under the Confrontation Clause is a question of law that is reviewed de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006).

i. Physical Evidence

A district court's admission of physical evidence will be affirmed unless it constitutes an abuse of discretion. *State v. Daniels*, 361 N.W.2d 819, 827 (Minn. 1985).

j. Photographs

The admission of photographs is in the discretion of the district court and will not be reversed absent a showing of an abuse of discretion. *State v. Stewart*, 514 N.W.2d 559, 564 (Minn. 1994).

"Rulings on the admissibility of photographs as evidence are in the broad discretion of the district court and will not be reversed on appeal absent a showing of a clear abuse of discretion." *State v. Dame*, 670 N.W.2d 261, 264 (Minn. 2003).

k. Scope of Cross-Examination

The scope of cross-examination is left largely to the district court's discretion and will not be reversed absent a clear abuse of discretion. *State v. Parker*, 585 N.W.2d 398, 406 (Minn. 1998).

4. Jury Instructions

District courts are allowed "considerable latitude" in the selection of language for the jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). "[J]ury instructions must be viewed in their entirety to determine whether they fairly and adequately explained the law of the case." *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). "An instruction is in error if it materially misstates the law. Furthermore, it is well settled that the court's instructions must define the crime charged. In accordance with this, it is desirable for the court to explain the elements of the offense rather than simply to read statutes." *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001) (citations omitted).

The refusal to give a requested jury instruction lies within the discretion of the district court and will not be reversed absent an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). The focus of the analysis is on whether the refusal resulted in error. *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001).

Generally, when there is no argument that an unobjected-to instruction violated the defendant's right to a jury trial, the instruction is reviewed under the plain error standard. *State v. Vance*, 734 N.W.2d 650, 655 (Minn. 2007).

"We evaluate the erroneous omission of a jury instruction under a harmless error analysis." *State v. Lee*, 683 N.W.2d 309, 316 (Minn. 2004). When faced with an erroneous refusal to give jury instructions, the reviewing court must "examine all relevant factors to determine whether, beyond a reasonable doubt, the error did not have a significant impact on the verdict." *State v. Shoop*, 441 N.W.2d 475, 481 (Minn. 1989). If the error might have prompted the jury to reach a harsher verdict than it might otherwise have reached, the defendant is entitled to a new trial. *Id.*

a. Lesser-Included Offenses

"It is well established in our jurisprudence that we review the denial of a requested lesser-included offense instruction under an abuse of discretion standard." *State v. Dahlin*, 695 N.W.2d 588, 597 (Minn. 2005). "[W]e emphasize that when a defendant fails to request a lesser-included offense instruction warranted by the evidence, the defendant impliedly waives his or her right to receive the instruction." *Id.* at 597-98.

"The determination of what, if any, lesser offense to submit to the jury lies within the sound discretion of the [district] court, but where the evidence warrants an instruction, the [district] court must give it." *Bellcourt v. State*, 390 N.W.2d 269, 273 (Minn. 1986) (citations omitted).

b. Accomplice Instruction

"An accomplice instruction 'must be given in any criminal case in which any witness against the defendant might reasonably be considered an accomplice to the crime.'" *State v. Lee*, 683 N.W.2d 309, 316 (Minn. 2004) (quoting *State v. Shoop*, 441 N.W.2d 475, 479 (Minn. 1989)). "The duty to instruct on accomplice testimony remains regardless of whether counsel for the defendant requests the instruction" and omission of the jury instruction is error. *Id.* (citing *State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002)). "[W]here a district court fails to give a required accomplice corroboration instruction and the defendant does not object, an appellate court must apply the plain error analysis." *State v. Reed*, 737 N.W.2d 572, 584 n.4 (Minn. 2007).

5. Prosecutorial Misconduct

A district court's denial of a new-trial motion based on alleged prosecutorial misconduct will be reversed only "when the misconduct, considered in the context of the trial as a whole, was so serious and prejudicial that the defendant's constitutional right to a fair trial was impaired." *State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000).

There are two distinct standards for determining whether prosecutorial misconduct is harmless error; serious misconduct will be found "harmless beyond a reasonable doubt if the verdict rendered was surely unattributable to the error," while for less serious misconduct, the standard is "whether the misconduct likely played a substantial part in influencing the jury to convict." *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003) (quoting *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000)); *but see State v. Mayhorn*, 720 N.W.2d 776, 785 (Minn. 2006) (applying a streamlined approach to review of prosecutorial misconduct). The supreme court recently has questioned whether this two-tier approach is still good law, while declining to decide the question. *See State v. Pendleton*, 759 N.W.2d 900, 911 n.3 (Minn. 2009).

"If the defendant failed to object to the misconduct at trial, he forfeits the right to have the issue considered on appeal, but if the error is sufficient, this court may review." *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003) (citing *State v. Sanders*, 598 N.W.2d 650, 656 (Minn. 1999)). Only when the misconduct is unduly prejudicial will relief be granted absent a trial objection or request for instruction. *State v. Whittaker*, 568 N.W.2d 440, 450 (Minn. 1997). When the defendant fails to object, prosecutorial misconduct is reviewed under the plain-error standard announced in *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). *State v. Ramey*, 721 N.W.2d 294, 301 (Minn. 2006). On the third, or "prejudice" prong, the state now bears the burden of proving that there is no reasonable likelihood that the absence of the misconduct would have a significant effect on the jury's verdict. *Id.* at 302.

The general rule that a party must object to alleged prosecutorial misconduct or waive the issue does not apply to a criminal defendant appearing pro se. *State v. Reed*, 398 N.W.2d 614, 617 (Minn. App. 1986) (citing *State v. Stufflebean*, 329 N.W.2d 314, 318 (Minn. 1983)), *review denied* (Minn. Feb. 13, 1987).

6. Juror Misconduct

"The standard of review for denial of a *Schwartz* hearing is abuse of discretion." *State v. Church*, 577 N.W.2d 715, 721 (Minn. 1998). "The granting of a *Schwartz* hearing is generally a matter of discretion for the [district] court." *State v. Rainer*, 411 N.W.2d 490, 498 (Minn. 1987).

A district court's findings as to the presence or absence of juror bias is "based upon determinations of demeanor and credibility" and therefore is entitled to deference. Actual bias is a question of fact that the district court is in the best position to evaluate. *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008) (quotation omitted).

7. Mistrial

The denial of a motion for a mistrial is reviewed for an abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003).

8. Sufficiency of the Evidence

a. In General

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d

580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

b. Circumstantial Evidence

"[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). "While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Jones*, 516 N.W.2d at 549. A jury, however, is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

In applying this standard, the reviewing court does not examine all of the evidence in the record, and the inferences to be drawn from all the evidence, but only the inferences that can be drawn from the circumstances proved. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). The court does not consider conflicting facts and circumstances that the jury has rejected, or inferences from those facts. *Id.* But in assessing the inferences to be drawn from the "circumstances proved," the court examines whether there are "no other reasonable, rational inferences that are inconsistent with guilt." *Id.* at 330.

c. Evidence Corroborating an Accomplice's Testimony

The sufficiency of the circumstantial evidence to corroborate an accomplice's testimony that the defendant participated in the crime charged is reviewed in the light most favorable to the verdict. *State v. Bowles*, 530 N.W.2d 521, 532 (Minn. 1995).

"Corroborating evidence is sufficient if it 'restores confidence in the accomplice's testimony, confirming its truth and pointing to the defendant's guilt in some substantial degree.'" *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995) (quoting *State v. Scruggs*, 421 N.W.2d 707, 713 (Minn. 1988)).

"Evidence that merely shows the commission of the crime or the circumstances thereof is not sufficient to corroborate accomplice testimony." *State v. Johnson*, 616 N.W.2d 720, 727 (Minn. 2000). Corroborating evidence may be direct or circumstantial; it is viewed in a light most favorable to the verdict and, "while it need not establish a prima facie case of the defendant's guilt, it must point to [the]

defendant's guilt in some substantial way." *Id.; see* Minn. Stat. § 634.04 (2010) (providing that accomplice testimony must be corroborated).

D. SENTENCING

1. Calculation of Sentence

a. In General

The district court's determination of a defendant's criminal history score will not be reversed absent an abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

b. Jail Credit

"The granting of jail credit is not discretionary with the [district] court." *State v. Parr*, 414 N.W.2d 776, 778 (Minn. App. 1987), *review denied* (Minn. Jan. 15, 1988).

"'Awards of jail credit are governed by principles of fairness and equity and must be determined on a case-by-case basis.'" *State v. Arend*, 648 N.W.2d 746, 748 (Minn. App. 2002) (quoting *State v. Bradley*, 629 N.W.2d 462, 464 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001)).

c. Multiple Sentences

The district court's decision whether multiple offenses were committed as part of a single behavioral incident so as to preclude multiple sentencing entails factual determinations that will not be reversed unless clearly erroneous. *State v. O'Meara*, 755 N.W.2d 29, 37 (Minn. App. 2008). When the facts are not in dispute, the decision whether multiple offenses are part of a single behavioral incident presents a question of law that is reviewed de novo. *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001).

2. Imposition of Presumptive Sentence

Only in a "rare" case will a reviewing court reverse a district court's imposition of the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

3. Departures from Guidelines

a. In General

"[A] sentencing court has no discretion to depart from the sentencing guidelines unless aggravating or mitigating factors are present." *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999); *but see State v. Bendzula*, 675 N.W.2d 920, 923 (Minn. App.

2004) (noting that the guidelines preserve and enlarge the district court's discretion to depart downward).

A district court has broad discretion to depart from the presumptive sentence under the sentencing guidelines. *State v. Gassler*, 505 N.W.2d 62, 69 (Minn. 1993).

"We review a sentencing court's departure from the sentencing guidelines for abuse of discretion." *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003).

The question of whether a stated reason for departure is "proper" is a legal one. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). The review of the district court's decision *whether* to depart, based on identified and proper grounds for departure, is "extremely deferential." *Id.* at 595-96. Less discretion is given to the length of departure, although a less-than-double departure is given more deference than a greater-than-double departure. *Id.* at 596.

b. Mitigating Factors

The district court must order the presumptive sentence provided in the sentencing guidelines unless the case involves "substantial and compelling circumstances" to warrant a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). If the case involves substantial and compelling circumstances, it is within the district court's discretion whether to depart. *State v. Anderson*, 463 N.W.2d 551, 555 (Minn. App. 1990) (applying abuse-of-discretion standard in evaluating departure), *review denied* (Minn. Jan. 14, 1991).

c. Aggravating Factors

Departures from presumptive sentences are reviewed under an abuse of discretion standard, but there must be "substantial and compelling circumstances" in the record to justify a departure. *Rairdon v. State*, 557 N.W.2d 318, 326 (Minn. 1996).

"If the record supports findings that substantial and compelling circumstances exist, this court will not modify the departure unless it has a 'strong feeling' that the sentence is disproportional to the offense." *State v. Anderson*, 356 N.W.2d 453, 454 (Minn. App. 1984); *see also State v. Woelfel*, 621 N.W.2d 767, 774 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001).

Imposing a more onerous sentence on retrial may give rise to a presumption of vindictiveness, and a violation of due process, if under the circumstances there is a reasonable likelihood of vindictive sentencing. *Alabama v. Smith*, 490 U.S. 794, 798-99, 109 S. Ct. 2201, 2205 (1989); *State v. Pflepsen*, 590 N.W.2d 759, 768 (Minn. 1999).

The presumption of vindictiveness may be rebutted if the district court makes explicit findings on why new evidence justifies the imposition of a more onerous sentence. *Texas v. McCullough*, 475 U.S. 134, 137-38, 106 S. Ct. 976, 978 (1986) (quotations omitted); *State v. Carver*, 390 N.W.2d 431, 434 (Minn. App. 1986).

4. Restitution

"[District] courts are given broad discretion in awarding restitution." *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999).

5. Probation Revocation

"The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation and should be reversed only if there is a clear abuse of that discretion." *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980).

Whether the district court made the findings required for revocation of probation is a question of law, which this court reviews de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

E. POSTCONVICTION RELIEF

1. In General

Appellate courts "review a postconviction court's findings to determine whether there is sufficient evidentiary support in the record." *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Appellate courts "afford great deference to a district court's findings of fact and will not reverse the findings unless they are clearly erroneous. The decisions of a postconviction court will not be disturbed unless the court abused its discretion." *Id.* (citation omitted).

In reviewing a postconviction court's decision to grant or deny relief, issues of law are reviewed de novo and issues of fact are reviewed for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007); *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003) (noting also that appellate courts "extend a broad review of both questions of law and fact" when reviewing postconviction proceedings).

Review of a denial of postconviction relief based on the *Knaffla* procedural bar is for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

A summary denial of a postconviction petition is reviewed for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

2. New Trial

a. In General

"The denial of a new trial by a postconviction court will not be disturbed absent an abuse of discretion and review is limited to whether there is sufficient evidence to sustain the postconviction court's findings." *State v. Hooper*, 620 N.W.2d 31, 40 (Minn. 2000).

b. Newly Discovered Evidence

A new trial based upon newly discovered evidence may be granted when a defendant proves: "(1) that the evidence was not known to the defendant or his/her counsel at the time of the trial; (2) that the evidence could not have been discovered through due diligence before trial; (3) that the evidence is not cumulative, impeaching, or doubtful; and (4) that the evidence would probably produce an acquittal or a more favorable result." *Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997). *But see Dukes v. State*, 621 N.W.2d 246, 257 (Minn. 2001) ("Although the four-prong *Rainer* test is the correct test for newly-discovered evidence, it is not the correct test when a court reviews an allegation that false testimony was given at trial.").

c. Juror Misconduct

"The decision to grant a new trial based upon juror misconduct rests within the discretion of the [district] court and will not be reversed unless there is an abuse of discretion." *State v. Landro*, 504 N.W.2d 741, 745 (Minn. 1993).

d. Witness Recantations

"Courts have traditionally looked with disfavor on motions for a new trial based on recantations unless extraordinary or unusual circumstances exist." *Daniels v. State*, 447 N.W.2d 187, 188 (Minn. 1989).

"To receive a new trial based on recantation of testimony, [the defendant] must show that 1) the testimony was false; 2) he was surprised by the testimony and was unable to counteract it or did not know it was false until after the trial; and 3) the jury might have reached a different conclusion if it had not considered the false testimony." *Flournoy v. State*, 583 N.W.2d 564, 569 (Minn. 1998).

e. False Testimony and Incorrect Evidence

"A new trial may be granted for false testimony where: (a) the court is reasonably well satisfied that the testimony given by a material witness is false[;] (b) without it the jury *might* have reached a different conclusion[; and] (c) the party seeking the new trial was taken by surprise when the false testimony was given and was

unable to meet it or did not know of its falsity until after the trial." *State v. Smith*, 541 N.W.2d 584, 588 (Minn. 1996).

3. Ineffective Assistance of Counsel

"The defendant must affirmatively prove that his counsel's representation 'fell below an objective standard of reasonableness' and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)).

A postconviction decision regarding a claim of ineffective assistance of counsel involves mixed questions of fact and law and is reviewed de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004).

4. Motion for Release Pending Appeal

"[A]ppellate review under Rule 28.02, subd. 7(3) [involving motion for release pending appeal], unlike that provided in petitions for extraordinary writs, is de novo." *State v. Johnson*, 447 N.W.2d 605, 607 (Minn. App. 1989).

The district court is in a "far better position" than an appellate court to determine whether the appellant has made the showing required for release pending appeal. *State v. McKinley*, 424 N.W.2d 586, 586-87 (Minn. App. 1988).

F. COSTS

In reviewing a court order under Minn. Stat. § 611.21(a) for payment of expert witness fees on behalf of a defendant, "the district court's determination of reasonable compensation should be reviewed under an abuse of discretion standard." *In re Jobe*, 477 N.W.2d 723, 725 (Minn. App. 1991).

V. QUASI-CRIMINAL

A. JUVENILE

1. Delinquency Adjudications

"On appeal from a determination that each of the elements of a delinquency petition have been proved beyond a reasonable doubt, an appellate court is limited to ascertaining whether, given the facts and legitimate inferences, a fact-finder could reasonably make that determination. This court must assume that the fact-finder believed the state's witnesses and disbelieved any contrary evidence." *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 768 (Minn. App. 2001) (quotation and citations omitted).

"In reviewing the sufficiency of the evidence the court applies the same standard to bench and jury trials. The sufficiency standard is that the reviewing court views the evidence in the light most favorable to the state and decides whether the fact-finder could have reasonably found the defendant guilty. When the evidence is circumstantial, it must form a complete chain that, viewed as whole, leads so directly to the guilt of the defendant as to exclude any reasonable inference of doubt of guilt. The factual findings of the district court are upheld unless clearly erroneous." *In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004) (citations omitted).

In juvenile delinquency matters, "[w]e review questions of law de novo." *In re Welfare of R.J.E.*, 642 N.W.2d 708, 710-11 (Minn. 2002).

2. Stops

When an appellate court reviews a stop based on given facts, the test is not whether the district court decision is clearly erroneous, but whether, as a matter of law, the basis for the stop was adequate. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997).

3. *Miranda*

"We review findings of fact surrounding a purported *Miranda* waiver for clear error, and we review legal conclusions based on those facts de novo to determine whether the state has shown by a fair preponderance of the evidence that the suspect's waiver was knowing, intelligent, and voluntary." *State v. Burrell*, 697 N.W.2d 579, 591 (Minn. 2005) (addressing inadequate *Miranda* waiver of juvenile later tried as an adult).

"[W]hether a defendant was in custody at the time of an interrogation is a mixed question of law and fact, requiring the appellate court to apply the controlling legal standard to historical facts as determined by the [district] court. The appellate court reviews the district court's findings of fact under the clearly erroneous standard of review but reviews de novo the district court's custody determination and the need for

a *Miranda* warning." *In re Welfare of D.S.M.*, 710 N.W.2d 795, 797 (Minn. App. 2006) (quotations and citation omitted).

The harmless error analysis directs an appellate court to consider the impact of an error at trial, and a determination that a district court erred in admitting a juvenile's statement does not automatically result in a reversal and the granting of a new trial. *In re Welfare of T.J.C.*, 670 N.W.2d 629, 631 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004).

4. Stipulated Facts and Harmless Error Review

When this court determines that the district court erred, "harmless error review should not be applied to trials on stipulated facts" and the matter shall be remanded for a new hearing. *In re Welfare of R.J.E.*, 642 N.W.2d 708, 713 (Minn. 2002).

5. Certification and Extended Jurisdiction Juvenile (EJJ) Designation

"We review under a clearly erroneous standard the juvenile court's finding that the prosecutor proved by clear and convincing evidence that public safety would be served by designating respondent's prosecution EJJ." *In re Welfare of D.M.D.*, 607 N.W.2d 432, 437 (Minn. 2000).

"A district court has considerable latitude in deciding whether to certify a case for adult prosecution. Its decision will not be reversed unless [the court's] findings are clearly erroneous so as to constitute an abuse of discretion." *In re Welfare of D.T.H.*, 572 N.W.2d 742, 744 (Minn. App. 1997) (quotations and citations omitted), *review denied* (Minn. Feb. 19, 1998).

6. Dispositions and Requirement of Findings

"The district court has broad discretion to order dispositions authorized by statute [in juvenile proceedings], and the disposition will not be disturbed absent an abuse of discretion." *In re Welfare of J.S.H.-G.*, 645 N.W.2d 500, 504 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

"The [district] court has broad discretion in choosing the appropriate juvenile delinquency disposition. This court will affirm the disposition as long as it is not arbitrary. Findings of fact in the dispositional order will be accepted unless clearly erroneous. Absent a clear abuse of discretion, a [district] court's disposition will not be disturbed." *In re Welfare of J.A.J.*, 545 N.W.2d 412, 414 (Minn. App. 1996) (citations omitted).

Written dispositional findings "are essential to meaningful appellate review," and failure to make sufficient written findings constitutes reversible error. *In re Welfare of N.T.K.*, 619 N.W.2d 209, 211-12 (Minn. App. 2000); *see also* Minn. Stat. § 260B.198, subd. 1 (2010) (requiring order with findings as to the necessary

disposition for rehabilitation of a delinquent child); Minn. R. Juv. Delinq. P. 15.05, subd. 2 (setting out requirement of findings).

Absent a clear abuse of discretion, a reviewing court will affirm a probation revocation order and a disposition in a juvenile delinquency case. *In re Welfare of R.V.*, 702 N.W.2d 294, 298 (Minn. App. 2005). And when revoking the juvenile's probation, the district court need not follow the three-step probation revocation analysis set forth in *State v. Austin*, 295 N.W.2d 246 (Minn. 1980), but must make sufficient written findings in support of its disposition order. *Id.* at 302-04.

B. IMPLIED CONSENT

1. Findings of Fact

"As for the district court's findings of fact, they will not be set aside unless clearly erroneous. We hold findings of fact as clearly erroneous only when we are left with a definite and firm conviction that a mistake has been committed. When findings of fact rest almost entirely on expert testimony, the district court's evaluation of credibility is of particular significance." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (quotations and citations omitted); *see Ellingson v. Comm'r of Pub. Safety*, ___ N.W.2d ___, 2011 WL 2519113, at *2 (Minn. App. June 27, 2011) (same), *pet. for review filed* (Minn. July 25, 2011).

"Due regard is given the district court's opportunity to judge the credibility of witnesses, and findings of fact will not be set aside unless clearly erroneous." *Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008).

"A remand may be required if the [district] court fails to make adequate findings." *Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996). "A remand is unnecessary, however, when we are able to infer the findings from the [district] court's conclusions." *Id.*

"The district court's findings of fact must be sustained unless clearly erroneous . . . . Findings of fact are clearly erroneous when they are 'manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.'" *Schulz v. Comm'r of Pub. Safety*, 760 N.W.2d 331, 333 (Minn. App. 2009) (quoting *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985)) (citation omitted).

The district court's verbatim adoption of the commissioner's "proposed findings did not constitute reversible error per se" and "the clearly erroneous standard remains the proper standard of review." *Przymus v. Comm'r of Pub. Safety*, 488 N.W.2d 829, 832 (Minn. App. 1992), *review denied* (Minn. Sept. 15, 1992).

2. Conclusions of Law

"When the facts of a case are undisputed, probable cause is a question of law to be reviewed *de novo*." *Shane v. Comm'r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998).

"Whether the stop in this case was valid is, for the appellate court, purely a legal determination on given facts." *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985).

Where the appellant "raises only a question of law, our review is de novo." *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010) (addressing constitutional challenges).

"We apply a *de novo* standard of review to the district court's conclusions of law" on the issue of whether the officer violated the driver's limited right to counsel. *Nelson v. Comm'r of Pub. Safety*, 779 N.W.2d 571, 573 (Minn. App. 2010).

"We review a district court's determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo." *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010).

"Statutory interpretation presents a question of law, which we review de novo." *Johnson v. Comm'r of Pub. Safety*, 756 N.W.2d 140, 143 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

"After the facts are determined, this court must apply the law to determine if probable cause existed" to invoke the implied consent law. *Groe v. Comm'r of Pub. Safety*, 615 N.W.2d 837, 840 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000).

When the facts are undisputed, "it is a legal determination whether [the driver] was accorded a reasonable opportunity to consult with counsel based on the given facts." *Kuhn v. Comm'r of Pub. Safety*, 488 N.W.2d 838, 840 (Minn. App. 1992), *review denied* (Minn. Oct. 20, 1992).

"Conclusions of law will be overturned only upon a determination that the [district] court has erroneously construed and applied the law to the facts of the case." *Dehn v. Comm'r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

3. Abuse of Discretion

"'[A] trial judge has wide discretion to issue discovery orders and, absent clear abuse of that discretion, normally its order with respect thereto will not be disturbed.'" *Underdahl v. Comm'r of Pub. Safety (In re Comm'r of Pub. Safety)*, 735 N.W.2d 706, 711 (Minn. 2007) (alteration in original) (quoting *Shetka v. Kueppers, Kueppers, Von*

Feldt & Salmen, 454 N.W.2d 916, 921 (Minn. 1990)) (reversing court of appeals denial of petition for writ of prohibition).

"We review a district court's order for an abuse of discretion by determining whether the district court made findings unsupported by the evidence or by improperly applying the law." *Underdahl v. Comm'r of Pub. Safety (In re Comm'r of Pub. Safety)*, 735 N.W.2d 706, 711 (Minn. 2007).

In implied-consent proceedings, "[w]e apply an abuse-of-discretion standard of review to a district court's ruling on the admissibility of expert testimony." *Hayes v. Comm'r of Pub. Safety*, 773 N.W.2d 134, 136-37 (Minn. App. 2009).

4. Statutory Interpretation

"We apply a *de novo* standard of review to issues of statutory interpretation." *Nelson v. Comm'r of Pub. Safety*, 779 N.W.2d 571, 575 (Minn. App. 2010).

Statutory interpretation is a question of law, which we review de novo. *Johnson v. Comm'r of Pub. Safety*, 756 N.W.2d 140, 143 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

"The Minnesota Supreme Court has repeatedly recognized that laws prohibiting a person from driving a motor vehicle while intoxicated are remedial statutes. Consequently, such laws are liberally interpreted in favor of the public interest and against the private interest of the drivers involved." *Sands v. Comm'r of Pub. Safety*, 744 N.W.2d 24, 26 (Minn. App. 2008) (quotation omitted).

C. HABEAS CORPUS

1. Review of District Court's Decision

"The district court's findings in support of a denial of a petition for a writ of habeas corpus are entitled to great weight and will be upheld if reasonably supported by the evidence." *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010).

Questions of law pertaining to a habeas petition are subject to de novo review. *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010).

"An appellate court will review a habeas corpus decision de novo where, as here, the facts are undisputed." *State ex rel Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006); *Joelson v. O'Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

Where the issue raised in a petition involves the interpretation of statutes, it is subject to de novo review on appeal. *State ex. rel. McMaster v. Benson*, 495 N.W.2d 613, 614 (Minn. App. 1993), *review denied* (Minn. Mar. 11, 1993).

2. Extradition

"In an extradition case, a finding by the [district] court that the habeas corpus petitioner has failed to meet his burden of proof should be affirmed unless clearly erroneous." *Perez v. Sheriff of Watonwan Cnty.*, 529 N.W.2d 346, 349 (Minn. App. 1995).

3. Review of Revocation of Supervised Release or Prison Disciplinary Proceedings

The Department of Corrections fact-finder must find by a preponderance of the evidence that an inmate has violated a disciplinary rule before it can extend an inmate's date of supervised release for that rule violation. *Carrillo v. Fabian*, 701 N.W.2d 763, 777 (Minn. 2005) (holding that petitioner has protected liberty interest in supervised release date, which triggers right to procedural due process, and rejecting department's use of "some evidence" standard of proof at the fact-finding level as violating due process).

"This court reviews a decision to revoke an offender's release for a clear abuse of discretion" and "defers to a fact-finder's credibility determinations." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

D. EXPUNGEMENT

"A district court's exercise of its inherent authority to expunge records that are located within the judicial branch is a matter of equity, which this court reviews under an abuse-of-discretion standard of review, although findings of fact underlying a district court's decision will be set aside if they are clearly erroneous." *State v. N.G.K.*, 770 N.W.2d 177, 180 (Minn. App. 2009) (citations omitted).

"Whether a court has inherent authority to issue an expungement order affecting the executive branch is a question of law, which is subject to a *de novo* standard of review." *State v. N.G.K.*, 770 N.W.2d 177, 181 (Minn. App. 2009).

"The exercise of a court's inherent power to expunge is a matter of equity, and we therefore review the district court's conclusion under an abuse-of-discretion standard." *State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000).

The proper construction of the statutory expungement statute, Minn. Stat. § 609A.02, is a question of law that is reviewed de novo. *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000).

"A district court's findings of fact will not be set aside unless clearly erroneous. Clearly erroneous means manifestly contrary to the weight of the evidence or not supported by

the evidence as a whole." *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006) (quotation and citation omitted).

VI. ADMINISTRATIVE

A. IN GENERAL

1. Reviewability

"There is a presumption in favor of judicial review of agency decisions in the absence of statutory language to the contrary." *In re North Metro Harness Inc.*, 711 N.W.2d 129, 133-34 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. June 20, 2006).

2. Agency Jurisdiction

Whether an agency has jurisdiction over a matter is a legal question and thus a reviewing court need not defer to "agency expertise" or the district court's decision on the issue. *In re N. States Power Co.*, 775 N.W.2d 652, 656 (Minn. App. 2009).

"Whether an administrative agency has acted within its statutory authority is a question of law that we review de novo." *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010) (footnote omitted).

3. Burden of Proof on Appeal

The party challenging an agency decision bears the burden of proving that the decision violated provisions of the Administrative Procedures Act. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 118 (Minn. 2009).

B. GENERAL STANDARDS OF REVIEW

1. Questions of Law

"When a decision turns on the meaning of words in a statute or regulation, a legal question is presented. In considering such questions of law, reviewing courts are not bound by the decision of the agency and need not defer to agency expertise." *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989) (citations omitted).

"When . . . the language of an administrative rule is clear and capable of understanding, interpretation of the rule presents a question of law reviewed de novo." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002); *see also In re Rate Appeal of Benedictine Health Ctr.*, 728 N.W.2d 497, 503 (Minn. 2007).

"[W]hen a decision turns on the meaning of words in an agency's own regulation, it is a question of law that we review de novo." *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 515 (Minn. 2007).

2. Findings of Fact

"With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency's decision must be affirmed." *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 290 (Minn. App. 2010) (quotation omitted).

The reviewing court must not substitute its judgment for that of the administrative body when its findings are properly supported by evidence. *In re Denial of Eller Media Co.'s Applications for Outdoor Device Advert. Permits*, 664 N.W.2d 1, 7 (Minn. 2003).

"We defer to an agency's conclusion regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

3. Deference to the Agency

An administrative agency's decision enjoys a presumption of correctness; the appellate court defers to the agency's expertise and special knowledge in its field. *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 514 (Minn. 2007).

"We consider an agency's expertise or special knowledge when: (a) the agency is interpreting a regulation that is unclear or susceptible to more than one reasonable interpretation or the agency's interpretation is reasonable, or (b) when the application of the regulation is primarily factual and necessarily requires application of the agency's technical knowledge and expertise to the facts presented." *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 119 (Minn. 2009) (quotation and citations omitted).

"The agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency's authority, and judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing. We defer to an agency's conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (footnote omitted) (citations omitted).

"The standard of review is not heightened where the final decision of the agency decision-maker differs from the recommendation of the ALJ." *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

"An appellate court may reverse or modify an administrative decision if substantial rights of the petitioners have been prejudiced by administrative findings, inferences,

conclusions or decisions that are unsupported by substantial evidence in view of the entire record, or arbitrary and capricious, but the court must also recognize the need for exercising judicial restraint and for restricting judicial functions to a narrow area of responsibility lest [the court] substitute its judgment for that of the agency." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation and citations omitted).

"We presume the agency's decision . . . is correct, but the court may reverse an agency decision if the decision was affected by an error of law." *N. States Power Co. v. Minn. Pub. Utils. Comm'n*, 344 N.W.2d 374, 377 (Minn. 1984).

"Even if a constitutional issue is involved, the challenged determination of a legislative or administrative body may be due judicial deference if the underlying decision-making process is designed to effectively produce a correct or just result or if the decision is informed by considerable expertise." *Buettner v. City of St. Cloud*, 277 N.W.2d 199, 204 (Minn. 1979).

"[W]e have deferred to an agency's expertise and special knowledge when (1) the agency is interpreting a regulation that is unclear and susceptible to more than one interpretation; and (2) the agency's interpretation is reasonable." *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 515 (Minn. 2007).

"If an administrative agency engages in reasoned decisionmaking, the court will affirm, even though it may have reached a different conclusion had it been the factfinder. The court will intervene, however, where there is a "combination of danger signals which suggest the agency has not taken a 'hard look' at the salient problems" and the decision lacks "articulated standards and reflective findings." *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 669 (Minn. 1984) (citations omitted) (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977)).

4. Arbitrary and Capricious

"[A]n agency ruling is arbitrary and capricious if the agency (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise." *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006).

An agency's conclusions are not arbitrary and capricious so long as there is a rational connection between the facts found and the choice made. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009) (quotation and citations omitted).

"If there is room for two opinions on a matter, the [c]ommission's decision is not arbitrary and capricious, even though the court may believe that an erroneous decision was reached." *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009).

"Rejection of the ALJ's recommendations without explanation[,] however, may suggest that the agency exercised its will rather than its judgment and was therefore arbitrary and capricious." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

C. RULES OF CONSTRUCTION

1. Interpretation of Statutes

The appellate court reviews questions of statutory construction de novo. *Lee v. Fresenurs Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007).

"We note that on matters of statutory interpretation, this court is not bound by the determination of an administrative agency. The manner in which the agency has construed a statute may be entitled to some weight, however, where (1) the statutory language is technical in nature, and (2) the agency's interpretation is one of long-standing application." *Arvig Tel. Co. v. Nw. Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978); *see also In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

2. Interpretation of Agency Rules and Regulations

The appellate court reviews de novo the meaning of the words in a regulation as a question of law. If the meaning of the regulation is clear and unambiguous, the reviewing court gives no deference to the agency's interpretation. *In re Rate Appeal of Benedictine Health Ctr.*, 728 N.W.2d 497, 503 (Minn. 2007).

The appellate court will defer to the agency's expertise and special knowledge "when (1) the agency is interpreting a regulation that is unclear and susceptible to more than one interpretation; and (2) the agency's interpretation is reasonable." *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 515 (Minn. 2007). The appellate court will also "consider the agency's expertise and special knowledge when reviewing an agency's application of a regulation when application of the regulation is primarily factual and necessarily requires application of the agency's technical knowledge and expertise to the facts presented." *Id.* n.9 (quotation omitted).

"When the agency's construction of its own regulation is at issue, however, considerable deference is given to the agency interpretation, especially when the relevant language is unclear or susceptible to different interpretations. If a regulation is ambiguous, agency interpretation will generally be upheld if it is reasonable. No

deference is given to the agency interpretation if the language of the regulation is clear and capable of [being understood]; therefore, the court may substitute its own judgment." *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 40 (Minn. 1989) (footnote omitted) (citations omitted).

"We defer to an agency's interpretation of its own regulations." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 465 (Minn. 2002).

"When an agency's regulation is ambiguous, we will give deference to the agency's interpretation and will generally uphold that interpretation if it is reasonable." *Risdall v. Brown-Wilbert, Inc.*, 753 N.W.2d 723, 733 (Minn. 2008) (quotation omitted).

"We retain the authority to review de novo errors of law which arise when an agency decision is based upon the meaning of words in a statute." *In re Denial of Eller Media Co.'s Applications for Outdoor Adver. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003).

"[T]here are several factors courts need to consider when determining whether to give deference to an agency's interpretation [of its own regulation]. These factors include whether the agency is legally required to enforce and administer the regulation under review and whether the meaning of the words in the regulation is clear and unambiguous or is unclear and susceptible to different reasonable interpretations—ambiguous." *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 516 (Minn. 2007).

"When the language of a regulation is unclear or susceptible to different interpretations, we consider several factors to determine the level of judicial deference afforded to the agency's interpretation. First, we consider the nature of the regulation at issue. . . . Second, we consider the agency's expertise and judgment; specifically, we examine whether the subject matter of the regulation is within the agency's technical training, education, and experience. . . . Third, we will defer to the agency's expertise and special knowledge when the agency's interpretation of an unclear regulation is reasonable." *In re Alexandria Lake Area Sanitary Dist. NPDES/SDS Permit*, 763 N.W.2d 303, 312-13 (Minn. 2009) (quotation and citations omitted).

3. Constitutionality of Standard of Review Statutes

"The legislature surely has the power to insist that certain types of cases receive a more stringent review by the courts than others. The procedure that it imposes in order to achieve this result is, nevertheless, subject to constitutional limits. No legislative act can order the courts to conduct their unique judicial functions in a particular way or dictate their rules of procedure. Similarly, this court cannot dictate how legislation must be worded. This court must give great deference to an act of the legislature and interpret a statute, if possible, in such a way as to uphold its constitutionality." *St. Paul Cos. v. Hatch*, 449 N.W.2d 130, 137 (Minn. 1989).

D. REVIEW OF AGENCY ACTS

1. Agency Rules

a. Definition

A "rule" is defined as "every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure." Minn. Stat. § 14.02, subd. 4 (2010).

b. Standard of Review

"The validity of any rule may be determined upon the petition for a declaratory judgment thereon, addressed to the Court of Appeals, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner." Minn. Stat. § 14.44 (2010).

"In proceedings under section 14.44, the court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures." Minn. Stat. § 14.45 (2010); *see also Minn.-Dakotas Retail Hardware Ass'n v. State*, 279 N.W.2d 360, 363 (Minn. 1979) (clarifying "the scope and nature of judicial review of prospective administrative regulations" as provided by statute).

A rule "is unreasonable (and therefore invalid) when it fails to comport with substantive due process because it is not rationally related to the objective sought to be achieved." *Mammenga v. State Dep't of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989).

2. Agency Rulemaking – Minn. Stat. §§ 14.05-.47 (2010)

Standard of Review

"The standard of review in a pre-enforcement action [questioning the validity of the process by which the rule was made and its general validity] is more limited than it would be in a challenge to enforcement of a rule in a contested-case appeal." *Peterson v. Dep't of Labor & Indus.*, 591 N.W.2d 76, 78-79 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). The appellate court reviews an agency's rulemaking proceedings using an arbitrary and capricious standard. The agency must provide the evidence on which it relied and show how that evidence rationally supports the agency's action. *Id.*

"When an [agency] acts in a legislative capacity, the standard of review is whether it exceeded its statutory authority; when the [agency] acts in a quasi-judicial capacity, the standard of review is the substantial evidence test." *In re Request for Serv. in Qwest's Tofte Exchange*, 666 N.W.2d 391, 395 (Minn. App. 2003).

3. Agency Quasi-Legislative Action

a. Definition

"An agency exercises a legislative as opposed to a quasi-judicial function when it balances cost and noncost factors and makes choices among public policy alternatives. The agency acts in its legislative capacity in determining the extent to which competition should be permitted or limited." *In re Qwest's Wholesale Serv. Quality Standards*, 678 N.W.2d 58, 62 (Minn. App. 2004) (citation omitted).

b. Standard of Review

"When an agency exercises a legislative function, its decision is affirmed unless it is shown, by clear and convincing evidence, to be in excess of statutory authority or to have unjust, unreasonable, or discriminatory results." *In re Qwest's Wholesale Serv. Quality Standards*, 678 N.W.2d 58, 62 (Minn. App. 2004).

4. Agency Decisions in Contested Case/Quasi-Judicial Actions

a. Definition

A "contested case" is "a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing." Minn. Stat. § 14.02, subd. 3 (2010).

"An agency acts in a quasi-judicial manner when the commission hears the view of opposing sides presented in the form of written and oral testimony, examines the record and makes findings of fact." *In re North Metro Harness, Inc.*, 711 N.W.2d 129, 137 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. June 20, 2006).

b. Standard of Review

"The legislature codified some aspects of this deferential review of agency decisions arising out of contested case proceedings in the Minnesota Administrative Procedures Act (MAPA)." *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 513 (Minn. 2007).

"In a judicial review [of a contested-case hearing] the court may affirm the decision of the agency or remand the case for further proceedings; or it may

reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

(a) in violation of constitutional provisions; or
(b) in excess of the statutory authority or jurisdiction of the agency; or
(c) made upon unlawful procedure; or
(d) affected by other error of law; or
(e) unsupported by substantial evidence in view of the entire record as submitted; or
(f) arbitrary or capricious."

Minn. Stat. § 14.69 (2010).

"An agency's quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious." *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004) (quotation omitted).

"Substantial evidence is defined as: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted).

"The substantial evidence test requires a reviewing court to evaluate the evidence relied upon by the agency in view of the entire record as submitted. If an administrative agency engages in reasoned decisionmaking, the court will affirm, even though it may have reached a different conclusion had it been the factfinder. The court will intervene, however, where there is a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings." *Cable Commc'ns Bd. v. Nor-west Cable Commc'ns P'ship*, 356 N.W.2d 658, 668-69 (Minn. 1984) (quotations and citations omitted).

"[A] substantial judicial deference is to be accorded to the fact-finding processes of the administrative agency." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 279 (Minn. 2001) (quotation omitted).

"We defer to an agency's conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

Absent manifest injustice, inferences drawn from the evidence by an agency must be accepted by a reviewing court "even though it may appear that contrary inferences would be better supported or that the reviewing court would be inclined to reach a different result were it the trier of fact." *Ellis v. Minneapolis Comm'n on Civil Rights*, 295 N.W.2d 523, 525 (Minn. 1980).

5. Review When District Court Considered Issue

"[I]f the [district] court conducts a de novo hearing, then appellate inquiry is limited to whether the district court's findings are clearly erroneous." *Fisher Nut Co. v. Lewis ex rel. Garcia*, 320 N.W.2d 731, 734 (Minn. 1982).

"In reviewing decisions of administrative agencies, [an appellate court] is not bound by the district court's decision. [The appellate court] may conduct an independent examination of the administrative agency's record and decision and arrive at its own conclusions as to the propriety of that determination." *Signal Delivery Serv., Inc. v. Brynwood Transfer Co.*, 288 N.W.2d 707, 710 (Minn. 1980); *see also In re Fin. Responsibility for Mental Health Servs. Provided to D.F.*, 656 N.W.2d 576, 578 (Minn. App. 2003).

"Where the [district] court reviewing an agency decision makes independent factual determinations and otherwise acts as a court of first impression, this court applies the clearly erroneous standard of review. Where, on the other hand, the [district] court is itself acting as an appellate tribunal with respect to the agency decision, this court will independently review the agency's record." *In re Hutchinson*, 440 N.W.2d 171, 175 (Minn. App. 1989) (citations and quotation marks omitted), *review denied* (Minn. Aug. 9, 1989); *see also In re Expulsion of N.Y.B.*, 750 N.W.2d 318, 323-24 (Minn. App. 2008).

"When reviewing a district court's summary judgment order affirming an agency's negative declaration regarding the need for an EIS, the court reviews the agency decision to determine if it is unreasonable, arbitrary, or capricious, with review focused on the legal sufficiency of and factual basis for the reasons given. We will affirm the agency's decision if it was not arbitrary or capricious even though the court may have reached a different conclusion had it been the fact-finder. We review the administrative record and determine whether there is substantial evidence supporting the agency finding." *In re Am. Iron & Supply Co.'s Proposed Metal Shredding Facility*, 604 N.W.2d 140, 144 (Minn. App. 2000) (quotations omitted).

E. REVIEW OF SPECIFIC AGENCIES

1. Minnesota Department of Employment and Economic Development (DEED) (Formerly Minnesota Department of Economic Security)

a. Generally

In 2005, the usual standard of review for administrative agencies became applicable to certiorari appeals of DEED decisions. 2005 Minn. Laws ch. 112, art. 2, § 34, at 709-10 (adding Minn. Stat. § 268.105, subd. 7(d)).

"The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

(1) in violation of constitutional provisions;
(2) in excess of the statutory authority or jurisdiction of the department;
(3) made upon unlawful procedure;
(4) affected by other error of law;
(5) unsupported by substantial evidence in view of the entire record as submitted; or
(6) arbitrary or capricious."

Minn. Stat. § 268.105, subd. 7(d) (2010); *see Vasseei v. Schmitty & Sons Sch. Buses, Inc.*, 793 N.W.2d 747, 749-50 (Minn. App. 2010) (citing this standard of review); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (same).

b. Current Law: Review of Decision by Unemployment-Law Judge on Reconsideration

Under current law, the ULJ holds an evidentiary hearing and issues an initial decision; if a request for reconsideration is filed, that ULJ will review his or her own decision and then issue a decision on reconsideration. Minn. Stat. § 268.105, subd. 2 (2010); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531 (Minn. App. 2007). A ULJ cannot consider new evidence unless an additional hearing is ordered. Minn. Stat. § 268.105, subd. 2(c) (2010); *Vasseei v. Schmitty & Sons Sch. Buses, Inc.*, 793 N.W.2d 747, 749 (Minn. App. 2010) (approving ULJ's own decision to order an additional evidentiary hearing based on ULJ's admitted failure to properly assist pro se party). Appellate courts directly review the decision of the ULJ. Minn. Stat. § 268.105, subd. 7(a) (2010); *see Ywswf*, 726 N.W.2d at 531.

c. Prior Law: Review of Decision by Senior Unemployment Review Judge (SURJ) or Commissioner's Representative

Before the 2005 amendments, the referee (now unemployment-law judge (ULJ)) held a hearing and then issued a decision that was subject to de novo review by the senior unemployment review judge (SURJ) or the commissioner's representative. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 530-31 (Minn. App. 2007) (describing change in law); *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 593-94 (Minn. App. 2006) (same).

Under this previous statutory scheme, appellate courts reviewed and deferred to the decision of the SURJ or the commissioner's representative rather than the referee/unemployment-law judge. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531 (Minn. App. 2007); *see, e.g., Tuff v. Knitcraft Corp.*, 526 N.W.2d 50, 51 (Minn. 1995) (reviewing decision of commissioner's representative); *Nelson v. Comm'r of Emp't & Econ. Dev.*, 698 N.W.2d 443, 445-46 (Minn. App. 2005) (reviewing decision of SURJ).

d. Factual Findings

Under Minn. Stat. § 268.105, subd. 7(d)(5) (2010), the court of appeals may reverse or modify the ULJ's findings or inferences if they are "unsupported by *substantial* evidence in view of the entire record as submitted." (Emphasis added.) "This court views the ULJ's factual findings in the light most favorable to the decision. This court also gives deference to the credibility determinations made by the ULJ. As a result, this court will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008); *see also McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 711-12 (Minn. App. 2010) (applying substantial-evidence test); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (same).

Thus, the *current* statutory standard for the court of appeals to apply is whether the findings are substantially supported by the record; the *previous* common-law standard was whether findings were *reasonably* supported by the record. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (stating under prior law that commissioner's factual findings will not be disturbed "as long as there is evidence that reasonably tends to sustain those findings").

The supreme court continues to use the reasonably supported standard of review, under which the court "should not disturb [the ULJ's] findings as long as there is evidence in the record that *reasonably tends* to sustain them." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (emphasis added) (quotations omitted). *Stagg* did not cite Minn. Stat. § 268.105, subd. 7(d)(5) (2010), which contains the "substantial evidence" standard of review adopted by the legislature in 2005. 2005 Minn. Laws ch. 112, art. 2, § 34, at 709-10. In addition, the standard of review in subdivision 7(d) specifically refers only to the standard of

review for the court of appeals, not the supreme court. Whether the supreme court will address this remains to be seen.

e. Credibility Determinations

"When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2010). This court will affirm if "[t]he ULJ's findings are supported by substantial evidence and provide the statutorily required reason for her credibility determination." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (setting out factors to consider in making credibility determinations). If the ULJ does not make the credibility determinations required by Minn. Stat. § 268.105, subd. 1(c), this court will "remand for additional findings that satisfy the statute." *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007).

"This court . . . gives deference to the credibility determinations made by the ULJ." *McNeilly v. Dept. of Emp't & Econ. Dev.*, 778 N.W.2d 707, 710 (Minn. App. 2010). "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

f. Questions of Law

The court of appeals may reverse or modify the ULJ's decision if it is affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(4) (2010). When addressing a question of law, the appellate court is "free to exercise [ ] independent judgment." *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006); *see also Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989) (similar language). An appellate court will "review de novo" a question of law. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

"An appellate court will exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law." *Irvine v. St. John's Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010).

"Whether the decision was proper is a question of law reviewed de novo." *Carlson v. Dep't of Emp't & Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008).

g. Statutory Construction

(1) Question of law reviewed de novo

"The public purpose of this chapter is: Economic insecurity because of involuntary unemployment of workers in Minnesota is a subject of general concern that requires appropriate action by the legislature. The public good is promoted by providing workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed. This program is the 'Minnesota unemployment insurance program.'" Minn. Stat. § 268.03, subd. 1 (2010).

"There is no equitable or common law denial or allowance of unemployment benefits." Minn. Stat. § 268.069, subd. 3 (2010).

"This chapter is remedial in nature and must be applied in favor of awarding unemployment benefits. Any legal conclusion that results in an applicant being ineligible for unemployment benefits must be fully supported by the facts. In determining eligibility or ineligibility for benefits, any statutory provision that would preclude an applicant from receiving benefits must be narrowly construed." Minn. Stat. § 268.031, subd. 2 (2010); *see Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (citing policy that unemployment compensation is paid only to those who are unemployed through no fault of their own as well as remedial nature of statute); *Irvine v. St. John's Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010) (same).

"We review questions of statutory construction de novo." *Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002). "Thus, this case presents an issue of statutory interpretation, which we review de novo." *Bukkuri v. Dep't of Emp't & Econ. Dev.*, 729 N.W.2d 20, 21 (Minn. App. 2007).

"Statutory construction is . . . a legal issue reviewed de novo." *Vasseei v. Schmitty & Sons Sch. Buses, Inc.*, 793 N.W.2d 747, 750 (Minn. App. 2010).

"The critical issue is the interpretation of the Act and the federal regulations . . . . Statutory interpretation is a question of law, which we review de novo. DEED argues that it is entitled to deference in its interpretation of these federal statutes and regulations. But when 'the meaning of the words in [a] regulation is clear and unambiguous, [the court] need not defer to the agency's interpretation and may substitute its own judgment for that of the agency.' *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 516 (Minn.2007); *see also St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39–40 (Minn.1989) ("When a decision turns on the meaning of words in a statute or regulation, a legal

question is presented," and therefore "reviewing courts are not bound by the decision of the agency and need not defer to agency expertise"). Thus, if we conclude that the Act and regulations are clear and unambiguous with respect to the issue before us, DEED's interpretation is entitled to no deference." *Abdi v. Dep't of Emp't & Econ. Dev.*, 749 N.W.2d 812, 815 (Minn. App. 2008) (citations omitted).

(2) Deferring to agency's own interpretation of its statute

Almost all of the unemployment-benefits cases use a de novo standard of review to analyze statutory construction issues. But in *very rare* cases, there may be a need to refer to deferring to an agency's own interpretation of its statute. If so, the following cites may be used. While the appellate courts are "not bound by an agency's conclusions of law, the manner in which an agency has construed a statute may be entitled to some weight when the statutory language is technical in nature and the agency's interpretation is one of longstanding application." *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996). "This court will defer to an agency's interpretation of its own statutes unless such interpretation is in conflict with the express purpose of the statute and the legislature's intent." *Carlson v. Augsburg College*, 604 N.W.2d 392, 394 (Minn. App. 2000).

h. No Presumption of Eligibility

Under prior law, "the employee [was] presumed to be eligible to receive unemployment [benefits] after discharge." *McGowan v. Exec. Express Transp. Enters., Inc.*, 420 N.W.2d 592, 595 (Minn. 1988). Currently, however, the statute provides: "There is no presumption of entitlement or nonentitlement to unemployment benefits." Minn. Stat. § 268.069, subd. 2 (2010).

i. Burden of Proof – Does it currently apply to unemployment-benefits cases?

(1) Common Law

Before the 2007 amendments to the unemployment-insurance law, in the case of a discharge, the employer was "given the burden of proving an employee guilty of misconduct and thus disqualified from receiving benefits." *McGowan v. Exec. Express Transp. Enters., Inc.*, 420 N.W.2d 592, 595 (Minn. 1988). The court reasoned that because the employee is presumed to be eligible to receive unemployment compensation after discharge, the employer has been given the burden of proving an employee guilty of misconduct and thus disqualified from receiving benefits. *Id.*; *see Marz v. Dep't of Emp't Servs.*, 256 N.W.2d 287, 289 (Minn. 1977) (same, citing remedial nature of law and public policy of granting benefits to those unemployed through no fault of their own). In the case of a quit, the employee "had the burden of establishing that he discontinued his

employment for good cause attributable to the employer." *Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978).

(2) 1999 - Statute amended, adding "without regard to any burden of proof" language

In 1999, the legislature added language to the statute specifically providing that eligibility determinations were to be made "without regard to any common law burden of proof." First, this language was added to Minn. Stat. § 269.069, subd. 2 to provide: "A claimant's entitlement to benefits shall be determined based upon that information available without regard to any common law burden of proof." 1999 Minn. Laws, ch. 107, § 40, at 408. The reference to "common law" was later removed. 2007 Minn. Laws ch. 128, art. 3, § 24 at 968.

Next, Minn. Stat. § 268.101 was amended to provide: "An issue of disqualification shall be determined based upon that information required of a claimant, any information that may be obtained from a claimant or employer, and information from any other source, without regard to any common law burden of proof." 1999 Minn. Laws, ch. 107, § 45, at 429; 2007 Minn. Laws ch. 128, art. 5, § 7, at 978 (removing reference to "common law").

Third, Minn. Stat. § 268.105 was amended, providing that the ULJ must conduct the evidentiary hearing "without regard to any common law burden of proof as an evidence gathering inquiry and not an adversarial proceeding." 1999 Minn. Laws, ch. 107, § 47, at 431-32 (adding language); 2007 Minn. Laws ch. 128, art. 1, § 18, at 942-43 (removing reference to "common law"); *see also Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004) (holding that unemployment benefits issues were to be "determined without regard to any common law burden of proof"), *review denied* (Minn. Mar. 30, 2004).

(3) 2009 – Statute amended to delete "without regard to any burden of proof" language

In 2009, the legislature acted again, this time to *remove* these references to making decisions "without regard to any burden of proof." Minn. Stat. § 268.069, subd. 2 was amended by 2009 Minn. Laws ch. 78, art. 3, § 5, at 590. Minn. Stat. § 268.101, subd. 2(c) was amended by 2009 Minn. Laws ch. 78, art. 4, § 32, at 613-14. Minn. Stat. § 268.105, subd. 1(b) was amended by 2009 Minn. Laws ch. 78, art. 4, § 34, at 615. The provision in Minn. Stat. § 268.105, subd. 1(b) that the evidentiary hearing before the ULJ is "not an adversarial proceeding" was also removed. 2009 Minn. Laws ch. 78, art. 4, § 34, at 615.

(4) Current Law – whether a burden of proof should be applied in unemployment-benefits cases

Whether the removal of the "without regard to any burden of proof" language brings back the burden of proof previously applied by the supreme court has not yet been determined as of this update. *See Sandy v. Comfort Home Health Care Grp.*, A09-1091, 2010 WL 1850417, at *4 n.1 (Minn. App. May 11, 2010) (noting the amendments without applying them); *Smithers v. Indep. Sch. Dist. No. 477*, No. A09-1051, 2010 WL 935451, at *3 & n.2 (Minn. App. Mar. 16, 2010) (although applying the 2008 version of statutes, noting that the legislature removed the "without regard to burden of proof" language in 2009); *Geringer v. S-M Enters. Inc.*, No. A09-1098, 2010 WL 772956, at *4 (Minn. App. Mar. 9, 2010) (same). It is likely that this court will be faced with this question in the near future.

j. Determination of "Ineligibility" (not "disqualification")

Before September 30, 2007, the unemployment-benefits statute used the terms "disqualify" or "ineligible" depending on the type of determination being made. *See* 2007 Minn. Laws ch. 128, art. 5, § 1, at 974 (containing statement of intent that replacement of disqualify or similar terms with ineligible or similar terms is not intended to be substantive change). For all department determinations, appeal decisions, and other actions taking place on or after September 30, 2007, the term "ineligible" was substituted for the term "disqualify" in Minnesota Statutes chapter 268; "[t]his substitution is not intended as a substantive change." 2007 Minn. Laws ch. 128, art. 5, §§ 1, 10, at 974, 981.

(1) Ineligibility Based on Misconduct

"Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quoting *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). "Determining whether a particular act constitutes disqualifying misconduct is a question of law that we review de novo. We have repeatedly stated that we will narrowly construe the disqualification provisions of the statute in light of their remedial nature, as well as the policy that unemployment compensation is paid only to those persons unemployed through no fault of their own." *Id.* (quotations and citation omitted).

"Whether an employee has engaged in conduct that disqualifies him from unemployment benefits is a mixed question of fact and law." *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

"Whether a particular act constitutes disqualifying misconduct is a question of law, which this court reviews de novo." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

"Whether an employee committed employment misconduct is a mixed question of fact and law. Whether the employee committed a particular act is a question of fact." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citation omitted), *review denied* (Minn. Oct. 1, 2008). "But whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo." *Id.*

(**2) Ineligibility Based on Quit**

"We may reverse or modify the ULJ's decision if it is affected by error of law. Minn. Stat. § 268.105, subd. 7(d)(4) (2008). We review questions of law de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005)." *Werner v. Med. Prof'ls LLC*, 782 N.W.2d 840, 842 (Minn. App. 2010) (addressing good reason to quit), *review denied* (Minn. Aug. 10, 2010).

"We review de novo a ULJ's decision that an applicant is ineligible to receive unemployment benefits. We may affirm the decision, remand it for further proceedings, or reverse or modify it if the relator's substantial rights have been prejudiced because the findings, inferences, conclusion, or decision is affected by an error of law or is unsupported by substantial evidence in view of the record as a whole. We view the ULJ's factual findings in the light most favorable to the decision and will not disturb them if they are substantially sustained by the evidence." *Sykes v. Nw. Airlines, Inc.*, 789 N.W.2d 253, 255 (Minn. App. 2010) (citations omitted) (addressing whether applicant quit employment to accept other employment with substantially better terms and conditions).

> "A person who quits employment is disqualified from unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2005). This court may reverse or modify a ULJ's decision if a petitioner's substantial rights were prejudiced because the ULJ's findings, inferences, conclusions, or decisions are unconstitutional, exceed the department's statutory authority or jurisdiction, are the product of unlawful procedure, are affected by an error of law, are unsupported by substantial evidence in the record, or are arbitrary or capricious. *Id.* § 268.105, subd. 7(d) (Supp. 2005). We review the findings in the light most favorable to the decision. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). We defer to the ULJ when reviewing credibility and conflicting evidence. *Skarhus v. Davanni's Inc.*,

> 721 N.W.2d 340, 344 (Minn. App. 2006). But we review questions of law de novo. *Scheeler v. Sartell Water Controls, Inc.*, 730 N.W.2d 285, 287 (Minn. App. 2007)."

Lamah v. Doherty Emp't Group, Inc., 737 N.W.2d 595, 598 (Minn. App. 2007) (addressing whether applicant quit an ongoing assignment).

> "Whether an employee has been discharged or voluntarily quit is a question of fact." *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). Factual findings will not be disturbed as long as they are substantially supported by the evidence. Minn. Stat. § 268.105, subd. 7(d)(5). When witness credibility and conflicting evidence are at issue, we defer to the decisionmaker's ability to weigh the evidence and make those determinations. *Whitehead v. Moonlight Nursing Care, Inc.* 529 N.W.2d 350, 352 (Minn. App. 1995).

Nichols v. Reliant Eng'g & Mfg., Inc. 720 N.W.2d 590, 594 (Minn. App. 2006).

"The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978) (interpreting predecessor statute and requiring "good cause" attributable to employer)." *Nichols v. Reliant Eng'g & Mfg., Inc.* 720 N.W.2d 590, 594 (Minn. App. 2006).

k. Additional Evidentiary Hearings

"This court will defer to the ULJ's decision not to hold an additional hearing." *Ywswf v. Teleplan Wireless Servs.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (referring to request for additional evidentiary hearing based on claims of new evidence).

"A reviewing court accords deference to a ULJ's decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) (referring to request for an additional evidentiary hearing when relator shows good cause for failing to participate in initial hearing). "The court will not reverse a ULJ's decision to deny an additional evidentiary hearing unless the decision constitutes an abuse of discretion." *Kelly v. Ambassador Press, Inc.*, 792 N.W.2d 103, 104 (Minn. App. 2010). "An error of law can constitute an abuse of discretion." *Id.*

"The ULJ did not abuse his discretion when, upon a timely request for reconsideration, he set aside his decision and ordered an additional evidentiary

hearing under Minn. Stat. § 268.105, subd. 2(a)(2), after determining that the unrepresented party's failure to present evidence at the hearing was the result of the ULJ's failure to assist the party as required by Minn. R. 3310.2921." *Vasseei v. Schmitty & Sons Sch. Buses, Inc.*, 793 N.W.2d 747, 751 (Minn. App. 2010).

2. School Boards

A reviewing court will reverse a school board's determination "when it is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law." *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990).

"The school board must make specific findings supporting its decision. If the findings are insufficient, the case can be either remanded for additional findings or reversed for lacking substantial evidence supporting the decision." *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990).

"This court reviews a school board's decision to terminate a teacher by looking at the entire record. The matter is, however, not heard *de novo* and this court may not substitute its judgment for that of the school board." *Atwood v. Indep. Sch. Dist. No. 51*, 354 N.W.2d 9, 11 (Minn. 1984).

3. Minnesota Pollution Control Agency

"A determination whether significant environmental effects result from this project is primarily factual and necessarily requires application of the agency's technical knowledge and expertise to the facts presented. Accordingly, it is appropriate to defer to the agency's interpretation of whether the statutory standard is met . . . . [W]e review the decision not to prepare an EIS for whether it was unsupported by substantial evidence in view of the entire record as submitted or was arbitrary or capricious." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002) (citing Minn. Stat. § 14.69 (2000)).

When reviewing a summary judgment affirming a negative declaration regarding the need for an EIS, we focus "on the proceedings before the decision-making body . . . , not the findings of the [district] court." *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 879 (Minn. App. 1995), *review denied* (Minn. July 28, 1995).

"[D]ecisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 463 (Minn. 2002) (quotation omitted).

"[I]n an area such as environmental review, uniquely involving application of an agency's expertise, technical training, and experience, the standard of review set forth in [the Minnesota Administrative Procedures Act (MAPA)] is appropriate. Therefore, despite the fact that a contested case proceeding was not held in this case, we believe application of the MAPA standards is appropriate." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002).

VII. ARBITRATION

A. DETERMINATION OF ARBITRABILITY

"This court has de novo review when reviewing arbitration clauses." *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 349 (Minn. 2003).

"In reviewing an arbitrator's decision, the arbitrator is the final judge of both law and fact, but this court's review of the determination of arbitrability is de novo." *Phillips v. Dolphin*, 776 N.W.2d 755, 758 (Minn. App. 2009), *review denied* (Minn. Mar. 16, 2010).

"[I]n order to award benefits, arbitrators must apply the law to the facts, and therefore we review de novo the arbitrators' legal determinations that are necessary to award, suspend or deny benefits." *W. Nat'l Ins. Co. v. Thompson*, 797 N.W.2d 201, 208 (Minn. 2011).

"[W]e review *de novo* the district court's determination that the parties did not agree to submit the present dispute to arbitration." *Johnson v. Piper Jaffray, Inc*., 530 N.W.2d 790, 795 (Minn. 1995).

B. SCOPE OF ARBITRATION

"[W]e should resolve any doubts concerning the scope of arbitrable issues in favor of arbitration . . . ." *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995).

Generally, a coverage dispute presents a question of law for the courts, not the arbitrators, and should be determined by the district court prior to any arbitration on the merits of the claim. *W. Nat'l Ins. Co. v. Thompson*, 797 N.W.2d 201, 207 (Minn. 2011).

C. BURDEN OF PROOF

The party seeking to vacate the arbitration award "has the burden of proving [its] invalidity." *Nat'l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984).

"The party opposing arbitration bears the burden of proving that the dispute is outside the scope of the agreement. In addition the party bears an especially high burden if that party drafted the arbitration agreement." *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 349 (Minn. 2003).

"[A]n arbitrators' award will be set aside by the courts only when the objecting party meets its burden of proof that the arbitrators have *clearly* exceeded the powers granted to them in the arbitration agreement; courts will not overturn an award merely because they may disagree with the arbitrators' decision on the merits." *State v. Minn. Ass'n of Prof'l Emps.*, 504 N.W.2d 751, 755 (Minn. 1993) (quotation omitted).

D. GENERAL STANDARDS OF REVIEW

"It is well settled that 'an arbitrator, in the absence of an agreement limiting his authority, is the final judge of both law and fact, including the interpretation of the terms of any contract, and his award will not be reviewed or set aside for mistake of either law or fact in the absence of fraud, mistake in applying his own theory, misconduct, or other disregard of duty.'" *State v. Minn. Ass'n of Prof'l Emps.*, 504 N.W.2d 751, 754 (Minn. 1993) (citing *Cournoyer v. Am. Television & Radio Co.*, 249 Minn. 577, 580, 83 N.W.2d 409, 411 (1957)).

"[A]rbitrators are the final judges of both law and fact; every reasonable presumption is to be exercised in favor of the finality and validity of the arbitration award, thus the scope of judicial review of an arbitration award is extremely narrow." *Peggy Rose Revocable Trust v. Eppich*, 640 N.W.2d 606 (Minn. 2002).

E. GROUNDS FOR VACATING AN ARBITRATION AWARD

1. General Statutory Grounds for Vacating Award

"When an arbitration award is appealed to the district court by proper application, the court may confirm, modify, correct, or vacate the award. Minn. Stat. § 572.18." *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398 (Minn. App. 2010) (quotation omitted).

"[T]he court shall vacate an [arbitration] award where:

> (1) The award was procured by corruption, fraud or other undue means;
> (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
> (3) The arbitrators exceeded their powers;
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 572.12, as to prejudice substantially the rights of a party; or
> (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 572.09 and the party did not participate in the arbitration hearing without raising the objection;

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award."

Minn. Stat. § 572.19, subd. 1 (2010).

2. Examples of Grounds for Vacating

a. Evident Partiality or Misconduct Prejudicing the Rights of a Party

"Whether challenged conduct constitutes evident partiality or prejudicial misconduct is a legal question reviewed de novo." *Aaron v. Ill. Farmers Ins. Grp.*, 590 N.W.2d 667, 669 (Minn. App. 1999) (quotation omitted).

b. Exceeding Powers

"The district court shall vacate the award, among other grounds, if the arbitrators exceeded their powers. Absent a clear showing that the arbitrators were unfaithful to their obligations, the courts assume that the arbitrators did not exceed their authority." *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398 (Minn. App. 2010) (quotation and citations omitted).

"[I]n the public sector an arbitrator has no authority to make constitutional determinations, irrespective of the language of the arbitration agreement." *Cnty. of Hennepin v. Law Enforcement Labor Servs., Inc., Local No. 19*, 527 N.W.2d 821, 825 (Minn. 1995).

"[I]n deciding issues of law, the appellate courts are not bound by the [district] court's conclusions, and may independently determine the issues pursuant to applicable statutory and case law. . . . The [district] court is not bound by the arbitrator's decision that its actions were within its authority." *MedCenters Health Care, Inc. v. Park Nicollet Med. Ctr.*, 430 N.W.2d 668, 672 (Minn. App. 1988), *review denied* (Minn. Apr. 26, 1989).

c. Collective Bargaining Agreements

"Where the decision is being challenged on the merits, an award cannot be vacated if it draws its 'essence' from the contract and can 'in some rational manner be derived from the agreement.'" *Metro. Airports Comm'n v. Metro. Airports Police Fed'n*, 443 N.W.2d 519, 524 (Minn. 1989) (quoting *Ramsey Cnty. v. AFSCME, Council 91, Local 8*, 309 N.W.2d 785, 792 (Minn. 1981)).

F. NO-FAULT AUTOMOBILE INSURANCE ARBITRATION

"Generally, a coverage dispute presents a question of law for the courts, not the arbitrators, and should be determined by the district court prior to any arbitration on the merits of the claim." *W. Nat'l Ins. Co. v. Thompson*, 797 N.W.2d 201, 206 (Minn. 2011).

Arbitrators are not required to give reasons for their decisions. To facilitate judicial review, we urge arbitrators to state whether their decisions in no-fault arbitrations are

based on factual determinations or legal conclusions. When arbitrators fail to give reasons for their decisions, they run the risk that they will be compelled to clarify their awards. *See* Minn. Stat. § 572.16 (2010)." *W. Nat'l Ins. Co. v. Thompson*, 797 N.W.2d 201, 208 n.3 (Minn. 2011).

"[N]o-fault arbitrators are limited to deciding questions of fact, leaving the interpretation of law to the courts." *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn. 2000). "Arbitration regarding automobile reparations therefore departs from the generally accepted principle that arbitrators are the final judges of both law and fact." *Id.* (quotation omitted).

The reasonableness of a refusal to submit to an independent medical examination (IME) "is a fact issue to be determined by the arbitrator." *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn. 2000).

"An arbitrator's findings of fact are final." *State Farm v. Liberty Mut. Ins. Co.*, 678 N.W.2d 719, 721 (Minn. App. 2004), *review denied* (Minn. June 29, 2004). "When reviewing a no-fault arbitration award, questions of law are reviewed de novo." *Id.*

"Appellate courts will review questions of statutory interpretation of the no-fault act de novo." *State Farm Mut. Auto. Ins. Co. v. Frelix*, 764 N.W.2d 581, 582 (Minn. App. 2009).